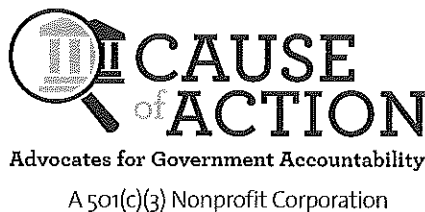


EXHIBIT 1

Cause of Action v. Treasury Inspector General for Tax Administration (D.D.C.)



October 9, 2012

VIA E-MAIL AND CERTIFIED MAIL

Ava Littlejohn, Public Liaison
Internal Revenue Service
Disclosure Scanning Operation - Stop 93A
Post Office Box 621506
Atlanta GA 30362-3006
Email: Ava.F.Littlejohn@irs.gov

RE: Freedom of Information Act Request

Dear Ms. Littlejohn,

We write on behalf of Cause of Action, a nonprofit, nonpartisan organization that uses investigative, legal, and communications tools to educate the public on how government accountability and transparency protects taxpayer interests and economic opportunity. We write to request information pursuant to the Freedom of Information Act (FOIA).¹

Section 6103 of the Internal Revenue Code (IRC) requires that tax returns and return information be confidential. In addition to the IRC's confidentiality requirements, no officer or employee of the United States "shall disclose any return or return information obtained by him in any manner[.]" The IRC defines "return information" to include a taxpayer's identity and the nature, source, or amount of his or her income.

However, the IRS is authorized to disclose tax return information to the President of the United States. IRC § 6103(g) states,

Upon written request by the President, signed by him personally, the Secretary shall furnish to the President, or to such employee or employees of the White House Office as the President may designate by name in such request, a return or return information with respect to any taxpayer named in such request.

Therefore, in accordance with FOIA, Cause of Action requests that the DOJ produce, within the next twenty (20) business days, the following documents within the possession, custody, and control of the IRS, from the time period of January 1, 2009 to the present:

¹ 5 U.S.C. § 552, *et seq.*

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- 1) All documents, including but not limited to emails, letters, and telephone logs or other telephone records, constituting communications to and/or from any employee of the IRS concerning any FOIA request or lawsuit that relates to I.R.C. § 6103(g);
- 2) All documents, including notes and emails, referring or relating to any communication described in request #1;
- 3) Any communications by or from anyone in the Executive Office of the President constituting requests for taxpayer or “return information” within the meaning of § 6103(a) that were not made pursuant to § 6103(g);
- 4) All documents, including notes and emails, referring or relating to any communication described in request #3;
- 5) All requests for disclosure by any agency pursuant to IRC §§ 6103(i)(1),² (i)(2),³ and (i)(3)(A);⁴
- 6) All documents, including communications not limited to notes, emails, letters, memoranda and telephone logs or other telephone records, referring or relating to records described in request #5;
- 7) All documents, including but not limited to emails, letters, telephone logs, and reports pertaining to any investigation by the Treasury Inspector General for Tax Administration into the unauthorized disclosure of § 6103 “return information” to anyone in the Executive Office of the President; and
- 8) From the time period of March 27, 2012, to the present, all documents, including e-mail communications, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under §6103(g)(1).

Cause of Action Is Entitled to a Complete Waiver of Fees (Public-Interest Purpose).

Cause of Action requests a waiver of both search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This statute provides that the requested information and/or documents shall be furnished without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or

² IRC § 6103(i)(1)(Disclosure of returns or return information to Federal officers or employees upon the grant of an ex parte order by a Federal district court judge or magistrate for use in Federal non-tax criminal investigations).

³ IRC § 6103(i)(2)(Disclosure of return information other than taxpayer return information to Federal officers or employees for use in Federal non-tax criminal investigations, upon request by the head of the agency or Inspector General thereof (or designated officials of the Department of Justice)).

⁴ IRC § 6103(i)(3)(A)(i) (Disclosure of return information other than taxpayer return information to apprise appropriate Federal officials of potential violations of Federal criminal law).

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activities of the government and is not primarily in the commercial interest of the requester.” Cause of Action, in the present matter, satisfies all of the required elements for a fee waiver.

- 1) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

First and foremost, “obtaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA.”⁵ It is for this reason that Cause of Action, a nonprofit, nonpartisan organization that uses public advocacy and legal reform strategies to ensure greater transparency in government and protect taxpayer interests and economic freedom, seeks disclosure of the requested documents. Disclosure of the information requested by Cause of Action in this instance is likely to contribute significantly to the understanding by the public at large of the operations and activities of the federal government as the documents requested concern the performance of the statutory and regulatory duties and responsibilities of the IRS, a federal government agency, in administering the civil and administrative forfeiture processes.

The IRS is funded with taxpayer dollars. As a result, the public at large has a moral and financial interest in knowing whether the IRS is appropriately and fairly executing its duties and responsibilities, especially considering concerns of transparency.⁶ Because of this, the information requested will benefit the public as opposed to the individual understanding of the requester or a narrow segment of interested persons. Disclosure would undoubtedly be of value to members of the public. Thus, this element is met.

- 2) Disclosure of the requested information is not in the commercial interest of Cause of Action.

Cause of Action does not seek this information to benefit commercially. Cause of Action is a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code. Our organization is committed to protecting the public’s right to be aware of the activities of government agencies and to ensuring the lawful and appropriate use of government funds by those agencies. Cause of Action will not make a profit from the disclosure of this information. This information will be used to further the knowledge and interests of the general public regarding the IRS. In the event the disclosure of this information creates a profit motive, it is not dispositive for the commercial interest test; media or scholars could have a profit motive, as long as the dissemination of the information is in their professional capacity and would further the public interest.⁷ Therefore, Cause of Action satisfies this element.

⁵ *Baltimore Sun v. United States Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001); *see also Center to Prevent Handgun Violence v. United States Dep’t of the Treasury*, 981 F. Supp. 20, 24 (D.D.C. 1997) (“This self-appointed watchdog role is recognized in our system.”).

⁶ *See supra* note 10.

⁷ *See Campbell v. Department of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

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- 3) Cause of Action has an ability to disseminate the requested information to the public and specifically intends to do so.

Cause of Action intends to make the results of this request available to the public in various medium forms. Cause of Action uses a combination of research, litigation, advocacy, and regularly disseminated publications to advance its mission. Our staff has a combined twenty-nine (29) years of expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through Cause of Action's regularly published online newsletter, memoranda, reports, or press releases. In addition, Cause of Action will disseminate any relevant information it acquires from this request to the public through its frequently visited website, www.causeofaction.org, which also includes links to thousands of pages of documents Cause of Action acquired through its previous FOIA requests, as well as documents related to Cause of Action's litigation and agency complaints. Lastly, after the production of the requested information, Cause of Action intends to produce a report on the IRS, addressing the concerns that have been raised.⁸ This report may be published at www.causeofaction.org, distributed to the news media, and sent to interested persons through our regular periodicals, including "Agency Check" and "Cause of Action News." An ability to show the presence of a website with occasional, consistent traffic is enough to show that a requester has an ability to disseminate information.⁹ As with the other two (2) outlined above, Cause of Action has also met this element, in effect, justifying a fee waiver.

Cause of Action Is Entitled to News Media Requester Category Status.

Cause of Action also asks that it not be charged search or review fees for this request because it qualifies as a "representative of the news media, or news media requester," under 5 U.S.C. § 552(a)(4)(A)(ii)(II).¹⁰ In *National Security Archive v. U.S. Dep't of Defense*,¹¹ the U.S. Court of Appeals for the District of Columbia Circuit noted that FOIA's legislative history demonstrates that "it is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which*

⁸ See *supra* note 10.

⁹ See *FedCURE v. Lappin*, 602 F. Supp. 2d 197, 203 (D.D.C. 2009).

¹⁰ Other agencies of the federal government have granted Cause of Action "representative of the news media" category status. See, e.g., FOIA Request HQ-2012-00752-F (Department of Energy), news media status granted on Feb. 15, 2012; FOIA Request No. 12-00455-F (Department of Education), news media status granted on Jan. 20, 2012; FOIA Request 12-267 (Federal Emergency Management Agency), news media status granted on Feb. 9, 2012; FOIA Request 2012-RMA-02563F (Department of Agriculture), news media status granted on May 3, 2012; FOIA Request 2012-078 (Department of Homeland Security), news media status granted on Feb. 15, 2012; FOIA Request 2012-00270 (Department of Interior), news media status granted on Feb. 17, 2012; FOIA Request (Department of Labor), news media status granted on April 20, 2012; FOIA Request CRRIF 2012-00077 (Department of Commerce), interim rolling production of documents on Mar. 1, 2012 without charge; FOIA Request F-2012-25414 (Department of State) news media status granted on June 15, 2012; FOIA Request 12-IGF-OIG-00054 (Department of Housing and Urban Development) news media status granted on July 23, 2012. As the U.S. Court of Appeals for the District of Columbia Circuit noted in *Oglesby v. United States Dep't of Army*, agencies should grant news media requestor status when other agencies have done so because of "the need for uniformity among the agencies in their application of FOIA." 920 F.2d 57, 66 (D.C. Cir. 1990).

¹¹ 880 F.2d 1381, 1386 (D.C. Cir. 1989).

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*regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'"*¹²

Cause of Action is organized and operated, *inter alia*, to publish and broadcast news, i.e., information that is about current events or that would be of current interest to the public. Cause of Action routinely and systematically disseminates information to the public through various medium forms. Cause of Action maintains a frequently visited website, www.causeofaction.org. Additionally, since September 2011, Cause of Action has published an e-mail newsletter. This newsletter provides subscribers with regular updates regarding Cause of Action's activities and information the organization has received from various government entities. Cause of Action also disseminates information via Twitter and Facebook. Cause of Action also produces a newsletter titled "Agency Check," which informs interested persons about actions of federal agencies, and another periodical, "Cause of Action News."¹³

Cause of Action gleans the information it regularly publishes in its newsletters from a wide variety of sources, including FOIA requests, government agencies, universities, law reviews, and even other news sources. Cause of Action researches issues on government transparency and accountability, the use of taxpayer funds, and social and economic freedom; regularly reports on this information; analyzes relevant data; evaluates the newsworthiness of the material; and puts the facts and issues into context. Cause of Action uses technology, including but not limited to the Internet, Twitter, and Facebook, in order to publish and distribute news about current events and issues that are of current interest to the general public. These activities are hallmarks of publishing, news, and journalism. Based on these extensive publication activities,¹⁴ Cause of Action qualifies for a fee waiver as a "representative of the news media, or news media requester," under FOIA and agency regulations.

¹² *Id.* (citing 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)) (emphasis in original).

¹³ CAUSE OF ACTION, *Newsletters*, available at <http://causeofaction.org/newsletters/>.

¹⁴ See, e.g., Matthew Boyle, *Report: ACORN-affiliated group gets \$300,000 more in taxpayer money*, THE DAILY CALLER, (Sept. 16, 2011), available at <http://dailycaller.com/2011/09/16/report-acorn-affiliated-group-gets-300000-more-in-taxpayer-money/>; Matthew Boyle, *Long-time ACORN affiliate secures \$350,000 in new taxpayer funding*, THE DAILY CALLER, (Sept. 19, 2011), available at <http://dailycaller.com/2011/09/19/long-time-acorn-affiliate-secures-350000-in-new-taxpayer-funding/>; Paul Streckfus, *Accountability Group Seeks IRS Investigation of ACORN Affiliates*, EO TAX JOURNAL, Ed. 2011-173, (Oct. 24, 2011); Bobby McMahon, *EPA Stalls Utility MACT Until December, Fights Industry Bid For Year Delay*, INSIDE EPA, (Oct. 24th, 2011), available at <http://insideepa.com/201110212379934/EPA-Daily-News/Daily-News/epa-stalls-utility-mact-until-december-fights-industry-bid-for-year-delay/menu-id-95.html>; Paul Streckfus, *More Commentary on NCPL's Annual Conference*, EO TAX JOURNAL, Ed. 2011-185, (Nov. 9, 2011); Patrick Reis and Darren Goode, *Senators hedge bets ahead of CSAPR vote - Second anti-reg bill to get vote - Perry's debate gaffe - Acrimony hits new heights in Solyndra spat*, POLITICO, (Nov. 10, 2011), available at <http://www.politico.com/morningenergy/1111/morningenergy374.html>; Paul Streckfus, *More Commentary on NCPL's Annual Conference*, EO TAX JOURNAL, Ed. 2011-187, (Nov. 15, 2011); Frank Maisano, *Nov 14 Energy Update: Chu'd Out in Congress*, ENERGYNOW!, (Nov. 15, 2011), available at <http://www.energynow.com/energypanel/2011/11/15/nov-14-energy-update-chud-out-congress>; Conn Carroll, *Labor board broke federal law on Boeing suit*, WASHINGTON EXAMINER, (Nov. 27, 2011), available at <http://campaign2012.washingtonexaminer.com/article/labor-board-broke-federal-law-boeing-suit>; Matthew Vadum, *Obama uses taxpayer cash to back ACORN Name changes used to dodge the law*, WASHINGTON TIMES, (Nov. 28, 2011), available at <http://www.washingtontimes.com/news/2011/nov/28/obama-uses-taxpayer-cash-to-back-acorn-name-change/>; Matthew Boyle, *Obama administration, GAO appear to have ignored group's ACORN affiliation to award \$700K*, THE DAILY CALLER, (Nov. 28, 2011), available at <http://dailycaller.com/2011/11/28/obama->

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Cause of Action's activities clearly fall within the statutory definition of this term. 5 U.S.C. § 552(a)(4)(A)(ii)(III) defines "representative[s] of the news media" broadly to include organizations that disseminate news through electronic communications, including "*publishers of periodicals . . . who make their products available for purchase by or subscription by or free distribution to the general public.*"¹⁵ Moreover, the FOIA statute itself, as amended in 2007, explicitly defines "representative of the news media"—a term that had previously been undefined in the statute—to specifically include organizations, such as Cause of Action, that regularly publish and disseminate online periodicals, *e.g.*, newsletters.¹⁶ The statutory definition unequivocally commands that organizations that electronically disseminate information and publications via "alternative media *shall* be considered to be news-media entities."¹⁷ As the plain language of the statute makes abundantly clear, then, an organization that regularly disseminates news via an online newsletter or periodical, such as Cause of Action, is a "representative of the news media" under the FOIA.

In *Electronic Privacy Information Center v. Dep't of Defense*, the court broadly construed a Department of Defense regulation defining "representative of the news media" to

administration-gao-appear-to-have-ignored-groups-acorn-affiliation-to-award-700k/; WORLDNETDAILY, *See which radicals got more taxpayer dollars: Support maintained despite organization's accounting 'problems,'* (Nov. 29, 2011), available at <http://www.wnd.com/index.php?fa=PAGE.view&pageId=372685>; Perry Chiaramonte, *ACORN Misused Federal Grant Funds, Report Says*, FOX NEWS, (Nov. 30, 2011), available at <http://www.foxnews.com/politics/2011/11/30/acorn-misused-federal-grant-funds-report-says/>; Marsha Shuler, *Group challenges La. contribution limit*, THE ADVOCATE, (Nov. 30, 2011), available at <http://theadvocate.com/news/1437637-123/group-challenges-la.-contribution-limit>; Margaret Menge, *Justice Audit Alleges ACORN Spin-Off in New York Misused Money*, NEWSMAX, (Dec. 1, 2011), available at <http://www.newsmax.com/US/ACORN-justice-audit-funds/2011/12/01/id/419672>; PITTSBURGH TRIBUNE-REVIEW, *Acorn lives: Meet AHCOA*, (Dec. 5, 2011), available at http://www.pittsburghlive.com/x/pittsburghtrib/opinion/s_770135.html; Tom Fitton, *Obama Administration Violating ACORN Funding Ban According to New Audit*, BIG GOVERNMENT, (Dec. 5, 2011), available at <http://biggovernment.com/tfitton/2011/12/05/obama-administration-violating-acorn-funding-ban-according-to-new-audit/>; NATIONAL RIGHT TO WORK COMMITTEE, *NLRB: Law Breakers?*, (Dec. 10, 2011), available at <http://www.nrtwc.org/nlrb-law-breakers/>.

¹⁵ 5 U.S.C. § 552(a)(4)(A)(ii)(III) (emphasis added).

¹⁶ The FOIA statute, as amended in 2007, defines "representative of the news media" as follows:

[T]he term "a representative of the news media" means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), *such alternative media shall be considered to be news-media entities.*

5 U.S.C. § 552(a)(ii)(III) (emphasis added).

¹⁷ *Id.* (emphasis added). See generally *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661-662 (2007) (noting the well-established proposition that, as used in statutes, the word "shall" is generally imperative or mandatory).

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include a 501(c)(3) that, like Cause of Action, maintains a frequently visited website and regularly publishes an e-mail newsletter. Under well-established precedent, then, a 501(c)(3) requester that regularly publishes online newsletters, such as Cause of Action, is entitled to a fee waiver as a "representative of the news media," where the agency's own regulations explicitly provide that "publishers of periodicals" qualify as representatives of the news media.

The information requested regarding the IRS and the Executive Branch, specifically which taxpayers' information the President has attempted to access and the IRS's handling of such requests will be of current interest to a large segment of the general public. Cause of Action will ultimately disseminate this information that it is statutorily entitled to, *inter alia*, through its regularly published online newsletter. Additionally, Cause of Action will take the information that is disclosed, using its editorial skills and judgment, to publish news articles that will be published on our website, distributed to other media sources, and distributed to interested persons through our newsletters.

As outlined above, the plain language of 5 U.S.C. § 552(a)(4)(A)(ii)(III), controlling precedent, and the agency's regulations clearly require the conclusion that Cause of Action is a representative of the news media.

Production of Information and Contact Information

We call your attention to President Obama's January 21, 2009, Memorandum concerning the FOIA, which states in relevant part:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA. . . . The presumption of disclosure should be applied to all decisions involving FOIA.¹⁸

On the same day, President Obama spoke on the FOIA to incoming members of the Cabinet and staff of the White House and stated in relevant part:

The old rules said that if there was a defensible argument for not disclosing something to the American people, then it should not be disclosed. That era is now over. Starting today, every agency and department should know that this administration stands on the side not of those who seek to withhold information but those who seek to make it known. To be sure, issues like personal privacy and national security must be treated with the care they demand. But the mere fact that you have the legal power to keep something secret does not mean you should always use it. The Freedom of Information Act is perhaps the most powerful instrument we have for making our government honest and transparent, and of

¹⁸ PRESIDENT BARACK OBAMA, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act*, Jan. 21, 2009, available at <http://www.whitehouse.gov/the-press-office/freedom-information-act>.

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holding it accountable. And I expect members of my administration not simply to live up to the letter but also the spirit of this law.¹⁹

If it is your position that any portion of the requested information is exempt from disclosure, Cause of Action requests that you provide a detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.

In the event that some portions of the requested information are properly exempt from disclosure, please redact such portions and produce all remaining reasonable segregable non-exempt portions of the requested record.²⁰ If you contend that information contains non-exempt segments, but those non-exempt segments are so dispersed throughout as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. If a request is denied in full, please outline that it is not possible to segregate portions of the record for release.

In an effort to facilitate record production within the statutory limit, Cause of Action prefers to accept information and/or documents in electronic format (*e.g.*, e-mail, .pdf). When necessary, Cause of Action will accept the "rolling production" of information and/or documents, but requests that you provide prompt notification of any intent to produce information on a rolling basis.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact me (Karen.Groen.Olea@causeofaction.org) or Marie Connelly (Marie.Connelly@causeofaction.org) immediately at (202) 507-5880. Please note that, for the purposes of responding to this request, the attached "Responding to Information Request" and "Definitions" should be interpreted consistently. We look forward to receiving the requested information and a waiver of both search and duplication fees within twenty (20) business days. Thank you for your time and assistance in this matter.

Sincerely,



KAREN GROEN

CHIEF OVERSIGHT COUNSEL

Encl. "Responding to Information Request" and "Definitions"

¹⁹ PRESIDENT BARACK OBAMA, *Remarks by the President in Welcoming Senior Staff and Cabinet Secretaries to the White House*, Jan. 21, 2009, available at <http://oversight.house.gov/hearing/foia-in-the-21st-century-using-technology-to-improve-transparency-in-government/>.

²⁰ See 5 U.S.C. § 552(b).

Responding to Information Requests

1. In complying with this request, you should produce all responsive information and/or documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to Cause of Action.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. Cause of Action's preference is to receive documents in electronic form (*i.e.*, CD, memory stick, or thumb drive) in lieu of paper productions.
4. When you produce information and/or documents, you should identify the paragraph in Cause of Action's request to which the documents respond.
5. It shall not be a basis for refusal to produce information and/or documents that any other person or entity also possesses non-identical or identical copies of the same documents.
6. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Cause of Action's staff to determine the appropriate format in which to produce the information.
7. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
8. In the event that information and/or documentation is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
9. If any information and/or documentation responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject, and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this request referring to information and/or document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all information

and/or documents which would be responsive as if the date or other descriptive detail were correct.

11. The time period covered by this request is January 1, 2007 to the present.
12. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
13. All documents shall be Bates-stamped sequentially and produced sequentially.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmation, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, e-mail, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, agents, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” when used in a question about an applicant, means to provide the following information: (a) the parties complete name and title; and (b) the parties business address and phone number.
6. The term “referring or relating” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

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- 1) All documents, including but not limited to emails, letters, and telephone logs or other telephone records, constituting communications to and/or from any employee of the IRS concerning any FOIA request or lawsuit that relates to I.R.C. § 6103(g);
- 2) All documents, including notes and emails, referring or relating to any communication described in request #1;
- 3) Any communications by or from anyone in the Executive Office of the President constituting requests for taxpayer or “return information” within the meaning of § 6103(a) that were not made pursuant to § 6103(g);
- 4) All documents, including notes and emails, referring or relating to any communication described in request #3;
- 5) All requests for disclosure by any agency pursuant to IRC §§ 6103(i)(1),² (i)(2),³ and (i)(3)(A);⁴
- 6) All documents, including communications not limited to notes, emails, letters, memoranda and telephone logs or other telephone records, referring or relating to records described in request #5;
- 7) All documents, including but not limited to emails, letters, telephone logs, and reports pertaining to any investigation by the Treasury Inspector General for Tax Administration into the unauthorized disclosure of § 6103 “return information” to anyone in the Executive Office of the President; and
- 8) From the time period of March 27, 2012, to the present, all documents, including e-mail communications, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under §6103(g)(1).

Cause of Action Is Entitled to a Complete Waiver of Fees (Public-Interest Purpose).

Cause of Action requests a waiver of both search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This statute provides that the requested information and/or documents shall be furnished without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or

² IRC § 6103(i)(1)(Disclosure of returns or return information to Federal officers or employees upon the grant of an ex parte order by a Federal district court judge or magistrate for use in Federal non-tax criminal investigations).

³ IRC § 6103(i)(2)(Disclosure of return information other than taxpayer return information to Federal officers or employees for use in Federal non-tax criminal investigations, upon request by the head of the agency or Inspector General thereof (or designated officials of the Department of Justice)).

⁴ IRC § 6103(i)(3)(A)(i) (Disclosure of return information other than taxpayer return information to apprise appropriate Federal officials of potential violations of Federal criminal law).

EXHIBIT 2

Cause of Action v. Treasury Inspector General for Tax Administration (D.D.C.)



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

October 31, 2012

Karen Groen
Chief Oversight Counsel
Cause of Action
2100 M Street NW
Suite 170-247
Washington, DC 20037-1233

Dear Karen Groen:

I am responding to your Freedom of Information Act (FOIA) request dated October 9, 2012, that we received on October 10, 2012.

I am unable to send the information you requested by November 7, 2012, which is the 20 business-day period allowed by law. I apologize for any inconvenience this delay may cause.

STATUTORY EXTENSION OF TIME FOR RESPONSE

The FOIA allows an additional ten-day statutory extension in certain circumstances. To complete your request I need additional time to search for, collect, and review responsive records from other locations. We have extended the statutory response date to November 23, 2012, after which you can file suit. An administrative appeal is limited to a denial of records, so it does not apply in this situation.

REQUEST FOR ADDITIONAL EXTENSION OF TIME

Unfortunately, we will still be unable to locate and consider release of the requested records by November 23, 2012. We have extended the response date to January 31, 2013 when we believe we can provide a final response.

You do not need to reply to this letter if you agree to this extension. You may wish to consider limiting the scope of your request so that we can process it more quickly. If you want to limit your request, please contact the individual named below. If we subsequently deny your request, you still have the right to file an administrative appeal.

You may file suit if you do not agree to an extension beyond the statutory period. Your suit may be filed in the U.S. District Court:

- Where you reside or have your principal place of business

- Where the records are located, or
- In the District of Columbia

You may file suit after November 23, 2012. Your complaint will be treated according to the Federal Rules of Civil Procedure applicable to actions against an agency of the United States. These procedures require that the IRS be notified of the pending suit through service of process, which should be directed to:

Commissioner of Internal Revenue
Attention: CC:PA: Br 6/7
1111 Constitution Avenue, NW
Washington, D.C. 20224

The FOIA provides access to existing records. Extending the time period for responding to your request will not delay or postpone any administrative, examination, investigation or collection action.

If you have any questions please call me at 801-620-7638 or write to me at: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13286-0081.

Sincerely,



Denise Higley
Tax Law Specialist
Badge No. 0142331
Headquarters (HQ) Disclosure FOIA Group

EXHIBIT 3

Cause of Action v. Treasury Inspector General for Tax Administration (D.D.C.)



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

December 11, 2012

Brandon Sherman
Cause of Action
1919 Pennsylvania Ave., NW
Suite 650
Washington, DC 20006

Dear Brandon Sherman:

This is an interim response letter to your Freedom of Information Act (FOIA) request dated October 9, 2012, that we received on October 10, 2012.

This interim response letter is addressing Items 3, 4, 5, 6, 7, and 8 of your request. Our office is continuing to process Items 1 and 2 of your request.

Your request indicates you are aware that Section 6103 of the Internal Revenue Code (IRC) requires that tax returns and return information be confidential. With this understanding, in the context of your FOIA request, you have indicated you are not seeking taxpayer specific information to which you are not entitled under Internal Revenue Code (IRC) section 6103.

In response to Items 3 and 4, you asked for all communications, documents, notes, and emails by or from anyone in the Executive Office of the President constituting requests for taxpayer or "return information" within the meaning of IRC section 6103(a) that were not made pursuant to IRC section 6103(g).

For the time frame specified in your request, all requests made to the IRS from White House personnel were for "tax checks". These are requests made when an individual is a prospective Presidential appointee, under consideration for employment within the Executive Branch. For such prospective employees, "tax checks" are conducted by the IRS at the request of the White House. All such disclosures to the White House of taxpayer specific information with respect to such "tax checks" are made pursuant to the written consent of the prospective employee who signs a waiver authorizing the disclosures of his/her return and return information under IRC section 6103(c). Information with respect to any of the requests is taxpayer specific and subject to the confidentiality provisions of IRC section 6103 and is therefore being withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

In response to Items 5 and 6 you asked for all requests, documents, emails, letters, etc., for disclosure by any agency pursuant to IRC sections 6103(i)(1), (i)(2), and (i)(3)(A).

IRC section 6103(i) concerns disclosures made in the context of Federal non-tax criminal investigations and prosecutions. Pursuant to IRC section 6103(i)(1), such disclosures are made pursuant to an ex parte order issued to the IRS by a Federal district court judge or magistrate at the request of enumerated personnel from the Department of Justice. Under IRC section 6103(i)(2), disclosures are made pursuant to an appropriate request from enumerated Executive Branch personnel, including heads of Federal agencies; and under IRC section 6103(i)(3), the IRS may make such disclosures at our own initiative when necessary to enforce a federal non-tax criminal law, when there is danger of imminent death or physical injury or for purposes of thwarting terrorist activities. Disclosures in all three categories are taxpayer specific such that all information pertaining to disclosures under IRC sections 6103(i)(1), (i)(2) or (i)(3) is protected by the confidentiality provisions of IRC section 6103 and is therefore being withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

In response to Item 7, you asked for all documents pertaining to any investigation by the Treasury Inspector General for Tax Administration (TIGTA) into the unauthorized disclosure of IRC section 6103 return information to anyone in the Executive Office of the President.

We have transferred this portion of your request to TIGTA. That office has jurisdiction over the records you requested and will respond to your request. If you need more information, you may write to:

Treasury Inspector General for Tax Administration
Office of Chief Counsel – Disclosure Branch
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

In response to Item 8, you asked from the time period of March 27, 2012, to the present, all documents, including e-mail communications, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under IRC section 6103(g)(1). We found no documents specifically responsive to this portion of your request.

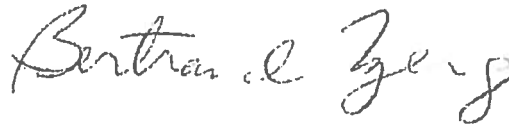
We are granting your request to waive fees associated with this response.

3

With the final response letter, we will enclose Notice 393 explaining your appeal rights.

If you have any questions please call Tax Law Specialist, Denise Higley, ID# 0142331, at 801-620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13286-0081.

Sincerely,

A handwritten signature in cursive script that reads "Bertrand Tzeng". The signature is written in dark ink and is positioned above the printed name and title.

Bertrand Tzeng
Acting Disclosure Manager
HQ Disclosure Program Operations and FOIA

EXHIBIT 4

Cause of Action v. Treasury Inspector General for Tax Administration (D.D.C.)



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

March 4, 2013

Karen Groen
Cause of Action
2100 M Street, NW
Suite 170-247
Washington, DC 20037-1233

Dear Ms. Groen:

This is the final response letter to your Freedom of Information Act (FOIA) request dated October 9, 2012, that we received on October 10, 2012.

Request Items 1 and 2

We have located records associated with the litigation filed by your organization concerning such requests and have deemed these records to be responsive to items 1 and 2 of your request.

Of the 796 pages located in response to this portion of your request, we are enclosing 790 pages on the enclosed CD. We are withholding 289 pages in part and 6 pages in full under FOIA exemptions (b)(5) and (b)(6). We are also withholding pages in part that our outside the scope of your request.

FOIA exemption (b)(5) exempts from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. There are three primary privileges covered by this exemption:

- The deliberative process privilege protects documents that reflect the pre-decisional opinions and deliberations that play a direct part in the process of making recommendations on legal or policy matters.
- The attorney work product privilege protects documents prepared by an attorney or other Service employee during litigation or in reasonable contemplation of litigation, and
- The attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice.

FOIA exemption (b)(6) exempts from disclosure files that, if released, would clearly be an unwarranted invasion of personal privacy. These include medical, personnel, and similar files. We base the determination to withhold on a balancing of interests between the protection of an individual's right to privacy and the public's right to access government information.

The Supreme Court ruled that Congress intended the "similar files" provision to be construed broadly, so that all information which applies to a particular individual qualifies for consideration under exemption (b)(6).

The redacted portions of each page are marked by the applicable FOIA exemptions.

Your password for accessing the CD is F#13286-0081f. To access the information on the CD, please follow the steps below:

1. Select GuardianEdge Removal Storage Access on your CD.
2. Select the file in the top left.
3. Select "open" file.
4. Select F#13286-0081.
5. Enter password F#13286-0081f.

Request Items 3-7

On December 4, 2012, our office sent an interim response letter addressing Items 3, 4, 5, 6, and 7 of your request. The following is a recap of the information provided in that letter.

Your request indicates you are aware that Section 6103 of the Internal Revenue Code (IRC) requires that tax returns and return information be confidential. With this understanding, in the context of your FOIA request, you have indicated you are not seeking taxpayer specific information to which you are not entitled under Internal Revenue Code (IRC) section 6103.

In response to Items 3 and 4, you asked for all communications, documents, notes, and emails by or from anyone in the Executive Office of the President constituting requests for taxpayer or "return information" within the meaning of IRC section 6103(a) that were not made pursuant to IRC section 6103(g).

For the time frame specified in your request, all requests made to the IRS from White House personnel were for "tax checks". These are requests made when an individual is a prospective Presidential appointee, under consideration for employment within the Executive Branch. For such prospective employees, "tax checks" are conducted by the IRS at the request of the White House. All such disclosures to the White House of taxpayer specific information with respect to such "tax checks" are made pursuant to the

written consent of the prospective employee who signs a waiver authorizing the disclosures of his/her return and return information under IRC section 6103(c). Information with respect to any of the requests is taxpayer specific and subject to the confidentiality provisions of IRC section 6103 and is therefore being withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

In response to Items 5 and 6 you asked for all requests, documents, emails, letters, etc., for disclosure by any agency pursuant to IRC sections 6103(i)(1), (i)(2), and (i)(3)(A).

IRC section 6103(i) concerns disclosures made in the context of Federal non-tax criminal investigations and prosecutions. Pursuant to IRC section 6103(i)(1), such disclosures are made pursuant to an ex parte order issued to the IRS by a Federal district court judge or magistrate at the request of enumerated personnel from the Department of Justice. Under IRC section 6103(i)(2), disclosures are made pursuant to an appropriate request from enumerated Executive Branch personnel, including heads of Federal agencies; and under IRC section 6103(i)(3), the IRS may make such disclosures at our own initiative when necessary to enforce a federal non-tax criminal law, when there is danger of imminent death or physical injury or for purposes of thwarting terrorist activities. Disclosures in all three categories are taxpayer specific such that all information pertaining to disclosures under IRC sections 6103(i)(1), (i)(2) or (i)(3) is protected by the confidentiality provisions of IRC section 6103 and is therefore being withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

In response to Item 7, you asked for all documents pertaining to any investigation by the Treasury Inspector General for Tax Administration (TIGTA) into the unauthorized disclosure of IRC section 6103 return information to anyone in the Executive Office of the President. We have transferred this portion of your request to TIGTA. That office has jurisdiction over the records you requested and will respond to your request. If you need more information, you may write to:

Treasury Inspector General for Tax Administration
Office of Chief Counsel – Disclosure Branch
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

Request Item 8

In response to item 8 of your request, the IRS has no record of requests from the White House or President of the United States pursuant to IRS 6103(g)(1).


Other Matters

We have granted your request to waive fees associated with this response.

This constitutes a partial denial of your request. We have enclosed Notice 393 explaining your appeal rights.

If you have any questions please call Tax Law Specialist, Denise Higley, ID# 0142331, at 801-620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13286-0081.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bertrand Tzeng".

Bertrand Tzeng
Disclosure Manager
HQ Disclosure Program Operations and FOIA

Enclosures:

CD

Notice 393

Information on an IRS Determination to Withhold Records Exempt From The Freedom of Information Act – 5 U.S.C. 552

Appeal Rights

You may file an appeal with the Internal Revenue Service (IRS) within 35 days after we (1) deny you access to a record in whole or in part; (2) have made an adverse determination as to your category as a requester; (3) deny your request for a fee waiver or reduction; or (4) have advised you that no records responsive to your request exist. You may file an appeal within 10 days when a request for expedited processing has been denied.

Your appeal **must** be in writing, must be signed by you, and must contain:

Your name and address,
Description of the requested records,
Date of the request (and a copy, if possible),
Identity of the office and contact on the response letter, and
Date of the letter denying the request (and a copy, if possible)

Mail your appeal to: **IRS Appeals**
Attention: FOIA Appeals
M/Stop 55202
5045 E. Butler Ave.
Fresno, California 93727-5136

Judicial Review

If we deny your appeal, or do not address an issue raised in your appeal within 20 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal, you may file a complaint in United States District Court in the district in which (1) you reside; (2) your principal place of business is located; (3) the records are located; or (4) the District of Columbia. A complaint may be filed within 10 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal if your appeal is from an adverse determination of a request for expedited processing. If you choose to file suit before receipt of a final determination by the Appeals office, the administrative appeals process may cease.

The rule for effecting service of judicial process upon the Internal Revenue Service is set forth in Federal Rule of Civil Procedure 4(i). In addition to service upon the United States, as set forth in Rule 4(i)(1), service must be made upon the Internal Revenue Service by registered or certified mail as set forth in Rule 4(i)(2)(A).

The address of the Internal Revenue Service is: Internal Revenue Service, Attention CC:PA, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

Exemptions

The Freedom of Information Act, 5 U.S.C. 552, does not apply to matters that are:

- (b)(1) • specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under such executive order,
- (b)(2) • related solely to the internal personnel rules and practices of an agency,
- (b)(3) • specifically exempted from disclosure by statute (other than section 552b of this title), provided that the statute:

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

Note: Internal Revenue Code sections 6103 and 6105 are statutes which qualify for exemption 3 treatment. Section 6103 protects the confidentiality of tax returns and information pertaining to a taxpayer collected by the IRS. Section 6105 protects information obtained from a foreign country under a tax treaty.

EXHIBIT 5

Cause of Action v. Treasury Inspector General for Tax Administration (D.D.C.)

Internal Revenue Service
Appeals Office M/S 55203
5045 E Butler Ave
Fresno, CA 93727-5136

Date: **MAY 06 2013**

KAREN GROEN OLEA
(CAUSE OF ACTION)
1919 PENNSYLVANIA AVE NW STE 650
WASHINGTON, DC 20006

Department of the Treasury

Person to Contact:

Diane Ambriz
Employee ID Number: 1000157666
Tel: (559) 253-4840
Fax: (559)-253-4880

Refer Reply to:

AP:CO:FRC:DMA

In Re:

Freedom of Information Act

Disclosure Case Number(s):

F13286-0081

Tax Period(s) Ended:

1/1/2009 to 10/9/2012

Dear Karen Groen Olea:

This letter is in response to your appeals request dated April 8, 2013 for Freedom of Information Act (FOIA) information. According to your letter you are appealing the response of March 4, 2013 from the Disclosure Office of your original request for information dated October 9, 2012.

You requested 8 items from the time period of January 1, 2009 to October 9, 2012. You requested:

- 1) All documents, including e-mails, letters, and telephone logs or other telephone records, constituting communications to and from any employee of the IRS concerning any FOIA request or lawsuit that relates to IRC section 6103(g).
- 2) All documents, including notes and emails, referring or relating to any communications described in request #1.
- 3) Any communications by or from anyone in the Executive Office of the President constituting requests for taxpayer or return information within the meaning of IRC section 6103(a) that is made in pursuant to IRC §610.
- 4) All documents, including notes and emails, referring or relating to any communications described in request #3.
- 5) All requests for disclosure by any agency pursuant to IRC sections 6103(i)(1),(i)(2), and (i)(3)(4).
- 6) All documents, including communications not limited to notes and emails, letters, memoranda and telephone logs or other telephone records, referring or relating to any communications described in request #5.
- 7) All documents, including but not limited to notes and emails, letters, telephone logs, and reports pertaining to any investigation by TIGTA into the unauthorized disclosure of §6103 return information to anyone in the Executive Office of the President and
- 8) From the time period of March 27, 2012, to the present, all documents, including email communications, constituting or relating to a request by the President or any one designated by the President in his Executive Office for tax records under §6103(g)(1).

The Disclosure Office located 796 pages in response to a portion of your request and enclosed 790 pages in a CD. Disclosure withheld 289 pages in part and 6 pages in full under FOIA exemptions (b)(5) and (b)(6). Disclosure also withheld pages in part that were outside the scope of your request.

The Disclosure Office explained FOIA exemptions (b)(5) and (b)(6). Disclosure properly explained IRC §6103(g).

FOIA exemption (b)(5) exempts from disclosure inter-agency or intra-agency memorandum or letters which would not be available by law to a party other than an agency in litigation with the agency. The three primary privileges covered by this exemption were explained as follows:

1. The deliberative process privilege protects documents that reflect the pre-decisional opinions and deliberations that play a direct part in the process of making recommendations on legal or policy matters. 2. The attorney work product privilege protects documents prepared by an attorney or other Service employee during litigation or in reasonable contemplation of litigation and 3. The attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice.

FOIA exemption (b)(6) exempts from disclosure files that if released would clearly be an unwarranted invasion of personal privacy, which is based on the determination to withhold on a balancing of interests between the protection of an individual's right to privacy and the public's right to access government information.

The Supreme Court ruled that Congress intended the "similar files" provision to be construed broadly, so that all information which applies to a particular individual qualifies for consideration under exemption (b)(6).

Disclosure responded to your request in items 3 and 4, requesting any communications by or from anyone, in the Executive Office of the President constituting requests for taxpayer or return information within the meaning of IRC §6103(a) that is made in pursuant to IRC §6103 and all documents including notes emails, letters, referring or relating to any communications by or from anyone in the Executive Office of the President.

Disclosure explained for the time frame you requested, all requests made to the IRS from White House Personnel were for tax checks. The requests were made when an individual is a prospective Presidential appointee, under consideration for employment within the Executive Branch. All tax checks are conducted by the IRS at the request of the White House and all such disclosures to the White House of taxpayer specific information with respect to such tax checks are made pursuant to the written consent of the prospective employee who signs a waiver authorizing the disclosure of their return information under IRC section 6103(c). Information with respect to any of the request is taxpayer specific and subject to the confidentiality provisions of IRC §6103 and was withheld under FOIA exemption (b)(3) in conjunction with IRC § 6103(a).

Disclosure responded to items 5 and 6 of your requests regarding all request, documents, emails, letter, etc. for disclosure by any agency pursuant to IRC sections 6103(i)(1), (i)(2) and (i)(3)(a).

Disclosure explained IRC section 6103(i) concerning disclosures made in the context of Federal non-tax criminal investigations and prosecutions. Disclosure explained IRC 6103 (i)(1) that such disclosures are made pursuant to an ex parte order issued to the IRS by a Federal district court judge or magistrate at the request of enumerated personnel from the Department of Justice.

Disclosure stated under IRC 6103 (i)(2), that disclosures are made pursuant to an appropriate request from enumerated Executive Branch personnel and under IRC section 6103(i)(3), the IRS may make disclosures at their own initiative when necessary to enforce a federal non-tax criminal law, when there is danger or imminent death or physical injury or for purposes of thwarting terrorist activities.

All three categories are taxpayer specific such that all information pertaining to disclosures under IRC 6103(i)(1), (i)(2) and (i)(3)(a) are protected by the confidentiality provisions of IRC section 6103 and was therefore withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

Disclosure responded to your request in item 7 requesting all documents pertaining to any investigation by TIGTA into the unauthorized disclosure of IRC section 6103 return information to anyone in the Executive Office of the President. Disclosure stated they transferred this request to TIGTA because they have jurisdiction over those records.

Disclosure responded to your request in item 8 requesting all documents, emails, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under 6103(g)(1). Disclosure stated the IRS has no record of requests from the White House or President of the U.S. pursuant to IRS 6103(g)(1).

Your appeal dated April 8, 2013 states that IRS improperly withheld six documents in full that were responsive to requested items 1 and 2, claiming FOIA exemptions (b)(5) and (b)(6). You stated the 289 redacted documents were also done improperly. You stated IRS's response did not specify how many of the six withheld-in-full documents were withheld under Exemptions 5 and 6. You stated the IRS improperly relied on FOIA exemptions 5 and 6 as a basis for its withholding and redactions, and its refusal to produce the requested records in full violates FOIA.

You state IRS failed to meet applied Exemption 5 because it did not provide sufficient specificity to permit CoA to understand its rationale for withholding the responsive information.

Your appeal states that IRS improperly applied Exemption 6 and you seek information related to unauthorized and statutorily authorized requests by the President and executive agencies for taxpayer information. You stated in asserting this exemption, the IRS has improperly weighed the interests between disclosure and individuals person privacy.

You stated IRS failed to undertake an adequate search reasonably calculated to uncover all relevant documents or failed to disclose that it withheld responsive documents both of which are impermissible under the law to the requested information related to IRC section 6103(g).

You stated the IRS improperly limited the scope of its search to your item 3 request requesting all communications by or from the Executive Office of the President. You state the IRS did not indicate that it searched for unauthorized request by the White House for taxpayer or return information.

You stated the IRS improperly claimed Exemption (b)(3) because IRS improperly relied on the exemption to withhold records responsive to requested items 3 and 6, claiming that all responsive documents are taxpayer specific and therefore subject to the confidentiality provisions of IRC section 6103. You stated what exemption (b)(3) allows and stated not all tax-related information is protected from disclosure under section 6103(a) and the specific information sought by FOIA must fall within the scope of the statutory exemption.

You stated IRS has claimed that IRC section 6103(a) exempts 1) all documents relating to White House requests for taxpayer or return information and 2) all documents relating to Executive Branch requests for taxpayer or return information pursuant to IRC section 6103(i)(1), (i)(2) and (i)(3). You state a communication requesting return information does not itself constitute return information and the purpose of section 6103(a) is to protect tax information. Yet a request by the White House or the Executive Branch does not include the nature or source of any tax related information, it is not for processing of the return or for tax investigation and it is not data with respect to a return or liability. An authorized tax check by the White House is made for the sole purpose of considering the employment of a prospective Presidential appointee and any request by the Executive Branch under section 6103(i) is made in the context of non-tax criminal investigations and prosecutions. You stated Cause of Action had no interest in any underlying return information the IRS provided to the President or the Executive Branch and since it is the IRS, not the President that is charged with the administration and enforcement of the tax laws, any requests that the White House or Executive Branch made could not possibly related to the determination of the existence, or possible existence, of liability of any person under this title or to whether the taxpayer return was, is being or will be examined. You state IRS improperly categorically denied these portions of your FOIA requests under FOIA exemption (b)(3) since CoA does not seek return information protected by the confidentiality provisions of IRC section 6103 and that IRS must provide the withheld documents as they are clearly responsive to requested items 3 and 6.

You stated IRS failed to release reasonably segregable portions of the records responsive to requested items 1-6. You stated that FOIA requires that all non-exempt information be disclosed, and that all agencies conduct a segregability review of responsive records to determine any portions of the records may be disc losable. You state agencies cannot justify withholding an entire document simply by showing that it contains some exempted material and you state IRS failed to provide adequate justification for failing to segregate the non-exempt materials from the exempt materials.

We have reviewed the response of the Disclosure Specialist, the Disclosure database, as well as the documents withheld and have determined that the response was appropriate. The Appeals office responsibility concerning the appeal of FOIA cases is limited to a de novo review to ensure the documents withheld or redacted for the specific requester and documents requested fall within the FOIA exemption(s) cited. We address the adequacy of the search and the appropriateness of the redactions and the exemptions cited. Our sole responsibility is to determine if the documents were properly withheld under the FOIA.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and the Office of Disclosure as a non-exclusive alternative to litigation. The Office of Appeals is not a part of this mediation process. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you disagree with the Appeals determination and wish to pursue mediation, you may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

The FOIA requires us to advise you of the judicial remedies granted in the Act. You may file a complaint in the United States District Court for the District in which you reside, or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

Sincerely,



T. Mitchell
Appeals Team Manager

EXHIBIT 6

Cause of Action v. Treasury Inspector General for Tax Administration (D.D.C.)

Allan Blutstein

From: Bowers Diane K TIGTA <Diane.Bowers@tigta.treas.gov>
Sent: Wednesday, May 22, 2013 4:09 PM
To: Marie Connelly
Subject: RE: Status of FOIA Request F13286-0081?

Hi Marie,

Yes, for appeal purposes, you may consider our response as being received today as you do not have a record of it being received previously.

Diane

From: Marie Connelly [<mailto:marie.connelly@causeofaction.org>]
Sent: Wednesday, May 22, 2013 2:00 PM
To: Bowers Diane K TIGTA
Subject: RE: Status of FOIA Request F13286-0081?

Dear Diane,

Thank you kindly for your quick response and for talking to me on the phone regarding CoA's FOIA Request, 2013-FOI-00017.

After reading TIGTA's November 30, 2012 letter, Cause of Action would like to appeal this determination. We realize that the 35-day deadline to submit an appeal has passed, but considering that Cause of Action did not receive the appeal because of the address change, we respectfully request an opportunity to submit an appeal with the 35-day period beginning today. Our appeal would therefore be due on or by June 26, 2013.

Alternatively, we could submit the same FOIA request to TIGTA, receive the same response from TIGTA, and start the process anew. However, this is inefficient for both TIGTA and for Cause of Action.

With your confirmation, the clock for CoA's appeal of the November 30, 2012 letter begins today. Please contact me at 202-407-9964 or at this email address if you have any question or would like any additional information.

Sincerely,
Marie

From: Bowers Diane K TIGTA [<mailto:Diane.Bowers@tigta.treas.gov>]
Sent: Wednesday, May 22, 2013 10:57 AM
To: Marie Connelly
Subject: RE: Status of FOIA Request F13286-0081?

Hi Marie,

Here is our response to Ms. Groen. I looked into whether we had sent an acknowledgment to Ms. Groen. I determined we did not send an acknowledgment to her as the IRS said to wait until they had

officially referred it to us. In the meantime (waiting for them to do the "official" referral), we went ahead and processed it and responded to our portion of the request.

Please call me if you have any other questions. Thank you.

Diane K. Bowers
Government Information Specialist
TIGTA/Chief Counsel/Disclosure Branch
Phone 202-927-7043
Fax 202-622-3339

From: Marie Connelly [<mailto:marie.connelly@causeofaction.org>]
Sent: Tuesday, May 21, 2013 5:16 PM
To: &TIGTA Chief Counsel Disclosure
Subject: Status of FOIA Request F13286-0081?

To Whom It May Concern:

On March 4, 2013, Bertrand Tzeng, Disclosure Manager for the HQ Disclosure Program Operations & FOIA, transferred a portion of Cause of Action's FOIA Request to your office. As you will see on page three of the attached letter, Mr. Tzeng states:

"In response to Item 7, you asked for all documents pertaining to any investigation by the Treasury Inspector General for Tax Administration (TIGTA) into the unauthorized disclosure of IRC section 6103 return information to anyone in the Executive Office of the President. We have transferred this portion of your request to TIGTA. That office has jurisdiction over the records you requested and will respond to your request."

I write to determine the status of this FOIA request, case number F13286-0081. Would you please call me at 202-407-9964 to discuss its status?

Marie A. Connelly | Staff Counsel | Cause of Action
1919 Pennsylvania Ave NW, Suite 650
Washington, D.C. 20006
marie.connelly@causeofaction.org
202.407.9964
Admitted in the District of Columbia & New York

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Confidentiality:

The information contained in, and attached to, this communication may be confidential, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.

Ber

EXHIBIT 7

Cause of Action v. Treasury Inspector General for Tax Administration (D.D.C.)



INSPECTOR GENERAL
FOR TAX
ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

November 30, 2012

Karen Groen
Cause of Action
2100 M Street, NW
Suite 170-247
Washington, DC 20037-1233

Dear Ms. Groen:

On October 30, 2012, the Internal Revenue Service (IRS) referred a portion of your October 9, 2012, Freedom of Information Act (FOIA) request, addressed to Ms. Ava Littlejohn, Public Liaison, to the Treasury Inspector General for Tax Administration (TIGTA) for handling as the records requested fall under the jurisdiction of TIGTA. The TIGTA Disclosure Branch received the referral on October 31, 2012.

Specifically, we are responding to item #7 of your request for records, from the time period of January 1, 2009 to the present, which states:

- 7) All documents, including but not limited to emails, letters, telephone logs, and reports pertaining to any investigation by the Treasury Inspector General for Tax Administration into the unauthorized disclosure of § 6103 "return information" to anyone in the Executive Office of the President.

With regard to your request for documents pertaining to a third party, TIGTA can neither admit nor deny the existence of responsive records. Your request seeks access to the types of documents for which there is no public interest that outweighs the privacy interests established and protected by the FOIA (5 U.S.C. §§ 552(b)(7)(C) and (b)(6)). This response should not be taken as an indication that such records exist; rather it is our standard response to requesters seeking records on third parties.

We have enclosed an Information Sheet that explains your administrative appeal rights. You may appeal this decision within thirty-five (35) days from the date of this letter. Your appeal must be in writing and signed by you. You should address the envelope as follows:

2

Freedom of Information Act Appeal
Treasury Inspector General for Tax Administration
Office of Chief Counsel
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

No fees would be assessed for processing this request.

If you have any questions, please contact Diane K. Bowers at (202) 927-7043 or diane.bowers@tigta.treas.gov and reference case # 2013-FOI-00017.

Sincerely,

A handwritten signature in cursive script that reads "Diane K. Bowers".

Diane K. Bowers
(For) Amy P. Jones
Disclosure Officer

Enclosure

Information on a TIGTA Determination to Withhold Records Exempt From the Freedom of Information Act – 5 U.S.C. § 552

Appeal Rights

You may file an appeal with the Treasury Inspector General for Tax Administration (TIGTA) within 35 days after we (1) determine to withhold records, (2) determine that no records exist, or (3) deny a fee waiver or a favorable fee category. If some records are released at a later date, you may file within 35 days after the date the last records were released. The appeal must be in writing, must be signed by you, and must contain the following information: your name and address; description of the requested records; date of the initial request (and a copy, if possible); date of the letter denying the request (and a copy, if possible). You should mail your appeal to:

Freedom of Information Act Appeal
Treasury Inspector General for Tax Administration
Office of Chief Counsel
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

Judicial Review

If we deny your appeal, or if we do not send you a reply within 20 days (not counting Saturdays, Sundays, or legal public holidays) after the date we receive the appeal, you may file a complaint with the U.S. District Court in the district where (1) you reside, (2) your principal place of business is located, or (3) the records are located. You may also file in the District Court for the District of Columbia.

The court will treat your complaint according to the Federal Rules of Civil Procedure (F.R.C.P.). Service of process is governed by Rule 4(d)(4) and (5), which requires that a copy of the summons and complaint be (1) personally served on the United State Attorney for the district in which the lawsuit is brought; (2) sent by registered or certified mail to the Attorney General of the United States at Washington, C.C.; and (3) sent by registered or certified mail to:

Treasury Inspector General for Tax Administration
Office of Chief Counsel
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

In such a court case, the burden is on the Treasury Inspector General for Tax Administration to justify withholding the requested records, determining that no records exist, or denying a fee waiver or a favorable fee category. The court may assess against the United States reasonable attorney fees and other litigation costs incurred by the person who takes the case to court and who substantially prevails. You will have substantially prevailed if the court determines, among other factors, that you had to file the lawsuit to obtain the records you requested and that the Treasury Inspector General for Tax Administration had no reasonable grounds to withhold the records. See Internal Revenue Service Regulations 26 CFR 601.702 for further details.

Exemptions

The Freedom of Information Act, 5 U.S.C. § 552, does not apply to matters that are:

- (b)(1) (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and
- (B) are, in fact, properly classified under such an Executive Order;

-2-

- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempt from disclosure by statute (other than section 552b of this title), provided that the statute
 - (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
 - (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

Note: subsection (b)(3) protects information exempted by certain qualifying statutes, such as Internal Revenue Code § 6103, which protects tax returns and information generated by and collected by the IRS with regard to a taxpayer.
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files that disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information
 - (A) could reasonably be expected to interfere with enforcement proceedings,
 - (B) would deprive a person of a right to a fair trial or an impartial adjudication,
 - (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.
 - (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or
 - (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

EXHIBIT 8

Cause of Action v. Treasury Inspector General for Tax Administration (D.D.C.)



June 12, 2013

VIA E-MAIL & CERTIFIED MAIL

Mr. Michael T. McCarthy
Office of Chief Counsel
Treasury Inspector General for Tax Administration
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

RE: Freedom of Information Act Appeal (2013-FOI-00017)

Dear Mr. McCarthy:

Cause of Action (CoA) hereby appeals the Treasury Inspector General for Tax Administration (TIGTA)'s November 30, 2012 response to item seven of CoA's Freedom of Information Act (FOIA) request dated October 9, 2012. CoA's FOIA request was referred to TIGTA by the Internal Revenue Service (IRS). Specifically, CoA appeals TIGTA's *Glomar* response.¹ As discussed below, this appeal is timely submitted.

Procedural History

On October 9, 2013, CoA submitted a FOIA request to the IRS seeking access to the following records:²

- 1) All documents, including but not limited to emails, letters, and telephone logs or other telephone records, constituting communications to and/or from any employee of the IRS concerning any FOIA request or lawsuit that relates to I.R.C. § 6103(g);
- 2) All documents, including notes and emails, referring or relating to any communication described in request #1;

¹ See *Phillippi v. CIA*, 546 F.2d 1009 (D.C. Cir. 1976) (raising issue of whether CIA could refuse to confirm or deny its ties to Howard Hughes' submarine retrieval ship, the "Glomar Explorer").

² FOIA Request from CoA to Ava Littlejohn, Public Liaison, Disclosure Scanning Operation – Stop 93A, Internal Revenue Service at 2 (Oct. 9, 2012) (original footnotes omitted) (Ex. 1)

Mr. Michael T. McCarthy
June 12, 2013
Page 2

- 3) Any communications by or from anyone in the Executive Office of the President constituting requests for taxpayer or "return information" within the meaning of § 6103(a) that were not made pursuant to § 6103(g);
- 4) All documents, including notes and emails, referring or relating to any communication described in request #3;
- 5) All requests for disclosure by any agency pursuant to IRC §§ 6103(i)(1), (i)(2), and (i)(3)(A);
- 6) All documents, including communications not limited to notes, emails, letters, memoranda and telephone logs or other telephone records, referring or relating to records described in request #5;
- 7) All documents, including but not limited to emails, letters, telephone logs, and reports pertaining to any investigation by the Treasury Inspector General for Tax Administration into the unauthorized disclosure of § 6103 "return information" to anyone in the Executive Office of the President; and
- 8) From the time period of March 27, 2012, to the present, all documents, including e-mail communications, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under §6103(g)(1).

This request was processed by the IRS, except for item seven, which was referred to TIGTA on October 30, 2012.³ Although TIGTA promptly made a final determination on November 30, 2012, CoA did not receive a copy of it because CoA had moved to a new location. Complicating matters, CoA was notified of the referral by the IRS only on December 11, 2012,⁴ and the IRS never advised CoA in its subsequent correspondence that TIGTA had issued a final determination; the IRS merely reiterated that it had referred item seven of the request to TIGTA.⁵

In light of what CoA perceived to be a significant delay in TIGTA's response, CoA contacted TIGTA Chief Counsel Disclosure by email on May 21, 2013, and asked for an update.⁶ The next day, May 22, 2012, Diane Bowers of TIGTA emailed CoA a copy of TIGTA's determination letter dated November 30, 2012.⁷ On behalf of TIGTA, Ms. Bowers also affirmed that the 35-day time period to appeal TIGTA's determination would commence on May 22, 2013.⁸ Thus, the appeal deadline is June 26, 2013,⁹ and COA's instant submission is timely.

³ Letter from Diane Bowers, Disclosure Officer, TIGTA, to Karen Groen, CoA at 1 (dated Nov. 30, 2012, but received May 22, 2013) (Ex. 2).

⁴ Letter from Bertrand Tzeng, Disclosure Manager, HQ Disclosure Program Operations & FOIA, IRS, to CoA, at 2 (Dec 11, 2012) (Ex. 3).

⁵ Final Response from Bertrand Tzeng, Disclosure Manager, HQ Disclosure Program Operations & FOIA, IRS, to CoA, at 3 (Mar. 4, 2013); (Ex. 4) IRS Denial letter from T. Mitchell, Appeals Team Manager, IRS, to Karen Groen Olea, CoA, at 3 (May 6, 2013) (Ex. 5).

⁶ Email from Marie Connelly, CoA to TIGTA Chief Counsel Disclosure (May 21, 2013) (Ex. 6).

⁷ Email from Diane Bowers, TIGTA, to Marie Connelly, CoA (May 22, 2013) (Ex. 7).

⁸ *Id.*

⁹ 31 C.F.R. § 1.5(i).

Mr. Michael T. McCarthy
June 12, 2013
Page 3

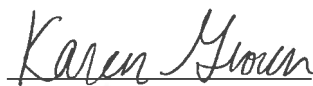
TIGTA improperly issued a *Glomar* response

In response to item seven of CoA's FOIA request, TIGTA issued a *Glomar* response by stating that "TIGTA can neither admit nor deny the existence of responsive records."¹⁰ To properly invoke *Glomar*, an agency must "demonstrate that acknowledging the mere existence of responsive records would disclose exempt information."¹¹ However, TIGTA's letter merely states that "Your request seeks access to the types of documents for which there is no public interest that outweighs the privacy interests established and protected by the FOIA."¹² This response is problematic in two respects. First, TIGTA neglected to identify the FOIA exemption(s) that were relied upon as grounds for its *Glomar* denial.¹³ Furthermore, to the extent TIGTA intended to invoke Exemption 6 or Exemption 7(C) in order to protect "privacy interests," we disagree that merely acknowledging the existence of responsive records would constitute an unwarranted invasion of personal privacy of a named individual. CoA requested access to records pertaining to TIGTA's investigations of the Executive Office of the President (EOP), not of any particular individual. The EOP is comprised of multiple entities and innumerable employees. See <http://www.whitehouse.gov/administration/eop>. Thus, the privacy interests implicated here are too attenuated to warrant a *Glomar* response.

Conclusion

Because TIGTA improperly issued a *Glomar* response, TIGTA should remand the request for a search and thereafter release any and all reasonably segregable, non-exempt records that are responsive to the request. Moreover, CoA requests that TIGTA waive all fees associated with production in response to CoA's request for the same reason set forth in our initial request, which the IRS granted on December 11, 2012.¹⁴ Thank you for your assistance in this matter. We await your prompt reply.

Sincerely,



Karen Groen
CHIEF OVERSIGHT COUNSEL

¹⁰ Letter from Diane Bowers, Disclosure Officer, TIGTA, to Karen Groen, CoA at 1 (dated Nov. 30, 2012, but received May 22, 2013) (Ex. 2).

¹¹ *Nation Magazine v. U.S. Customs Serv.*, 71 F.3d 885 (D.C. Cir. 1981).

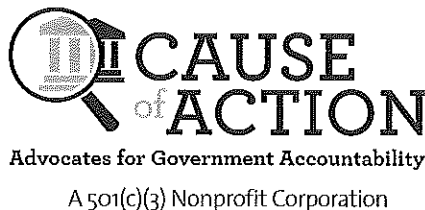
¹² Letter from Diane Bowers, Disclosure Officer, TIGTA, to Karen Groen, CoA at 1 (dated Nov. 30, 2012, but received May 22, 2013) (Ex. 2).

¹³ See *Elec. Privacy Info. Ctr. v. Nat'l Sec'y Admin.*, 678 F.3d 926, 931 (D.C. Cir. 2012) ("An agency may issue a *Glomar* response when 'to answer the FOIA inquiry would cause harm cognizable under' an applicable statutory exemption.") (citation omitted).

¹⁴ Letter from Bertrand Tzeng, Disclosure Manager, HQ Disclosure Program Operations & FOIA, IRS, to CoA, at 2 (Dec 11, 2012) (Ex. 3).

EXHIBIT

1



October 9, 2012

VIA E-MAIL AND CERTIFIED MAIL

Ava Littlejohn, Public Liaison
Internal Revenue Service
Disclosure Scanning Operation - Stop 93A
Post Office Box 621506
Atlanta GA 30362-3006
Email: Ava.F.Littlejohn@irs.gov

RE: Freedom of Information Act Request

Dear Ms. Littlejohn,

We write on behalf of Cause of Action, a nonprofit, nonpartisan organization that uses investigative, legal, and communications tools to educate the public on how government accountability and transparency protects taxpayer interests and economic opportunity. We write to request information pursuant to the Freedom of Information Act (FOIA).¹

Section 6103 of the Internal Revenue Code (IRC) requires that tax returns and return information be confidential. In addition to the IRC's confidentiality requirements, no officer or employee of the United States "shall disclose any return or return information obtained by him in any manner[.]" The IRC defines "return information" to include a taxpayer's identity and the nature, source, or amount of his or her income.

However, the IRS is authorized to disclose tax return information to the President of the United States. IRC § 6103(g) states,

Upon written request by the President, signed by him personally, the Secretary shall furnish to the President, or to such employee or employees of the White House Office as the President may designate by name in such request, a return or return information with respect to any taxpayer named in such request.

Therefore, in accordance with FOIA, Cause of Action requests that the DOJ produce, within the next twenty (20) business days, the following documents within the possession, custody, and control of the IRS, from the time period of January 1, 2009 to the present:

¹ 5 U.S.C. § 552, *et seq.*

Ms. Ava Littlejohn
October 9, 2012

- 1) All documents, including but not limited to emails, letters, and telephone logs or other telephone records, constituting communications to and/or from any employee of the IRS concerning any FOIA request or lawsuit that relates to I.R.C. § 6103(g);
- 2) All documents, including notes and emails, referring or relating to any communication described in request #1;
- 3) Any communications by or from anyone in the Executive Office of the President constituting requests for taxpayer or "return information" within the meaning of § 6103(a) that were not made pursuant to § 6103(g);
- 4) All documents, including notes and emails, referring or relating to any communication described in request #3;
- 5) All requests for disclosure by any agency pursuant to IRC §§ 6103(i)(1),² (i)(2),³ and (i)(3)(A),⁴
- 6) All documents, including communications not limited to notes, emails, letters, memoranda and telephone logs or other telephone records, referring or relating to records described in request #5;
- 7) All documents, including but not limited to emails, letters, telephone logs, and reports pertaining to any investigation by the Treasury Inspector General for Tax Administration into the unauthorized disclosure of § 6103 "return information" to anyone in the Executive Office of the President; and
- 8) From the time period of March 27, 2012, to the present, all documents, including e-mail communications, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under §6103(g)(1).

Cause of Action Is Entitled to a Complete Waiver of Fees (Public-Interest Purpose).

Cause of Action requests a waiver of both search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This statute provides that the requested information and/or documents shall be furnished without or at reduced charge if "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or

² IRC § 6103(i)(1)(Disclosure of returns or return information to Federal officers or employees upon the grant of an ex parte order by a Federal district court judge or magistrate for use in Federal non-tax criminal investigations).

³ IRC § 6103(i)(2)(Disclosure of return information other than taxpayer return information to Federal officers or employees for use in Federal non-tax criminal investigations, upon request by the head of the agency or Inspector General thereof (or designated officials of the Department of Justice)).

⁴ IRC § 6103(i)(3)(A)(i) (Disclosure of return information other than taxpayer return information to apprise appropriate Federal officials of potential violations of Federal criminal law).

Ms. Ava Littlejohn

October 9, 2012

activities of the government and is not primarily in the commercial interest of the requester.” Cause of Action, in the present matter, satisfies all of the required elements for a fee waiver.

- 1) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government.

First and foremost, “obtaining information to act as a ‘watchdog’ of the government is a well-recognized public interest in the FOIA.”⁵ It is for this reason that Cause of Action, a nonprofit, nonpartisan organization that uses public advocacy and legal reform strategies to ensure greater transparency in government and protect taxpayer interests and economic freedom, seeks disclosure of the requested documents. Disclosure of the information requested by Cause of Action in this instance is likely to contribute significantly to the understanding by the public at large of the operations and activities of the federal government as the documents requested concern the performance of the statutory and regulatory duties and responsibilities of the IRS, a federal government agency, in administering the civil and administrative forfeiture processes.

The IRS is funded with taxpayer dollars. As a result, the public at large has a moral and financial interest in knowing whether the IRS is appropriately and fairly executing its duties and responsibilities, especially considering concerns of transparency.⁶ Because of this, the information requested will benefit the public as opposed to the individual understanding of the requester or a narrow segment of interested persons. Disclosure would undoubtedly be of value to members of the public. Thus, this element is met.

- 2) Disclosure of the requested information is not in the commercial interest of Cause of Action.

Cause of Action does not seek this information to benefit commercially. Cause of Action is a nonprofit organization as defined under section 501(c)(3) of the Internal Revenue Code. Our organization is committed to protecting the public’s right to be aware of the activities of government agencies and to ensuring the lawful and appropriate use of government funds by those agencies. Cause of Action will not make a profit from the disclosure of this information. This information will be used to further the knowledge and interests of the general public regarding the IRS. In the event the disclosure of this information creates a profit motive, it is not dispositive for the commercial interest test; media or scholars could have a profit motive, as long as the dissemination of the information is in their professional capacity and would further the public interest.⁷ Therefore, Cause of Action satisfies this element.

⁵ *Baltimore Sun v. United States Marshals Serv.*, 131 F. Supp. 2d 725, 729 (D. Md. 2001); see also *Center to Prevent Handgun Violence v. United States Dep’t of the Treasury*, 981 F. Supp. 20, 24 (D.D.C. 1997) (“This self-appointed watchdog role is recognized in our system.”).

⁶ See *supra* note 10.

⁷ See *Campbell v. Department of Justice*, 164 F.3d 20, 38 (D.C. Cir. 1998).

Ms. Ava Littlejohn
October 9, 2012

- 3) Cause of Action has an ability to disseminate the requested information to the public and specifically intends to do so.

Cause of Action intends to make the results of this request available to the public in various medium forms. Cause of Action uses a combination of research, litigation, advocacy, and regularly disseminated publications to advance its mission. Our staff has a combined twenty-nine (29) years of expertise in government oversight, investigative reporting, and federal public interest litigation. These professionals will analyze the information responsive to this request, use their editorial skills to turn raw materials into a distinct work, and share the resulting analysis with the public, whether through Cause of Action's regularly published online newsletter, memoranda, reports, or press releases. In addition, Cause of Action will disseminate any relevant information it acquires from this request to the public through its frequently visited website, www.causeofaction.org, which also includes links to thousands of pages of documents Cause of Action acquired through its previous FOIA requests, as well as documents related to Cause of Action's litigation and agency complaints. Lastly, after the production of the requested information, Cause of Action intends to produce a report on the IRS, addressing the concerns that have been raised.⁸ This report may be published at www.causeofaction.org, distributed to the news media, and sent to interested persons through our regular periodicals, including "Agency Check" and "Cause of Action News." An ability to show the presence of a website with occasional, consistent traffic is enough to show that a requester has an ability to disseminate information.⁹ As with the other two (2) outlined above, Cause of Action has also met this element, in effect, justifying a fee waiver.

Cause of Action Is Entitled to News Media Requester Category Status.

Cause of Action also asks that it not be charged search or review fees for this request because it qualifies as a "representative of the news media, or news media requester," under 5 U.S.C. § 552(a)(4)(A)(ii)(II).¹⁰ In *National Security Archive v. U.S. Dep't of Defense*,¹¹ the U.S. Court of Appeals for the District of Columbia Circuit noted that FOIA's legislative history demonstrates that "it is critical that the phrase 'representative of the news media' be broadly interpreted if the act is to work as expected. . . . In fact, *any person or organization which*

⁸ See *supra* note 10.

⁹ See *FedCURE v. Lappin*, 602 F. Supp. 2d 197, 203 (D.D.C. 2009).

¹⁰ Other agencies of the federal government have granted Cause of Action "representative of the news media" category status. See, e.g., FOIA Request HQ-2012-00752-F (Department of Energy), news media status granted on Feb. 15, 2012; FOIA Request No. 12-00455-F (Department of Education), news media status granted on Jan. 20, 2012; FOIA Request 12-267 (Federal Emergency Management Agency), news media status granted on Feb. 9, 2012; FOIA Request 2012-RMA-02563F (Department of Agriculture), news media status granted on May 3, 2012; FOIA Request 2012-078 (Department of Homeland Security), news media status granted on Feb. 15, 2012; FOIA Request 2012-00270 (Department of Interior), news media status granted on Feb. 17, 2012; FOIA Request (Department of Labor), news media status granted on April 20, 2012; FOIA Request CRRIF 2012-00077 (Department of Commerce), interim rolling production of documents on Mar. 1, 2012 without charge; FOIA Request F-2012-25414 (Department of State) news media status granted on June 15, 2012; FOIA Request 12-IGF-OIG-00054 (Department of Housing and Urban Development) news media status granted on July 23, 2012. As the U.S. Court of Appeals for the District of Columbia Circuit noted in *Oglesby v. United States Dep't of Army*, agencies should grant news media requestor status when other agencies have done so because of "the need for uniformity among the agencies in their application of FOIA." 920 F.2d 57, 66 (D.C. Cir. 1990).

¹¹ 880 F.2d 1381, 1386 (D.C. Cir. 1989).

Ms. Ava Littlejohn
October 9, 2012

*regularly publishes or disseminates information to the public . . . should qualify for waivers as a 'representative of the news media.'"*¹²

Cause of Action is organized and operated, *inter alia*, to publish and broadcast news, i.e., information that is about current events or that would be of current interest to the public. Cause of Action routinely and systematically disseminates information to the public through various medium forms. Cause of Action maintains a frequently visited website, www.causeofaction.org. Additionally, since September 2011, Cause of Action has published an e-mail newsletter. This newsletter provides subscribers with regular updates regarding Cause of Action's activities and information the organization has received from various government entities. Cause of Action also disseminates information via Twitter and Facebook. Cause of Action also produces a newsletter titled "Agency Check," which informs interested persons about actions of federal agencies, and another periodical, "Cause of Action News."¹³

Cause of Action gleans the information it regularly publishes in its newsletters from a wide variety of sources, including FOIA requests, government agencies, universities, law reviews, and even other news sources. Cause of Action researches issues on government transparency and accountability, the use of taxpayer funds, and social and economic freedom; regularly reports on this information; analyzes relevant data; evaluates the newsworthiness of the material; and puts the facts and issues into context. Cause of Action uses technology, including but not limited to the Internet, Twitter, and Facebook, in order to publish and distribute news about current events and issues that are of current interest to the general public. These activities are hallmarks of publishing, news, and journalism. Based on these extensive publication activities,¹⁴ Cause of Action qualifies for a fee waiver as a "representative of the news media, or news media requester," under FOIA and agency regulations.

¹² *Id.* (citing 132 Cong. Rec. S14298 (daily ed. Sept. 30, 1986)) (emphasis in original).

¹³ CAUSE OF ACTION, *Newsletters*, available at <http://causeofaction.org/newsletters/>.

¹⁴ See, e.g., Matthew Boyle, *Report: ACORN-affiliated group gets \$300,000 more in taxpayer money*, THE DAILY CALLER, (Sept. 16, 2011), available at <http://dailycaller.com/2011/09/16/report-acorn-affiliated-group-gets-300000-more-in-taxpayer-money/>; Matthew Boyle, *Long-time ACORN affiliate secures \$350,000 in new taxpayer funding*, THE DAILY CALLER, (Sept. 19, 2011), available at <http://dailycaller.com/2011/09/19/long-time-acorn-affiliate-secures-350000-in-new-taxpayer-funding/>; Paul Streckfus, *Accountability Group Seeks IRS Investigation of ACORN Affiliates*, EO TAX JOURNAL, Ed. 2011-173, (Oct. 24, 2011); Bobby McMahon, *EPA Stalls Utility MACT Until December, Fights Industry Bid For Year Delay*, INSIDE EPA, (Oct. 24th, 2011), available at <http://insideepa.com/2011/10/24/110212379934/EPA-Daily-News/Daily-News/epa-stalls-utility-mact-until-december-fights-industry-bid-for-year-delay/menu-id-95.html>; Paul Streckfus, *More Commentary on NCPL's Annual Conference*, EO TAX JOURNAL, Ed. 2011-185, (Nov. 9, 2011); Patrick Reis and Darren Goode, *Senators hedge bets ahead of CSAPR vote - Second anti-reg bill to get vote - Perry's debate gaffe - Acrimony hits new heights in Solyndra spat*, POLITICO, (Nov. 10, 2011), available at <http://www.politico.com/morningenergy/1111/morningenergy374.html>; Paul Streckfus, *More Commentary on NCPL's Annual Conference*, EO TAX JOURNAL, Ed. 2011-187, (Nov. 15, 2011); Frank Maisano, *Nov 14 Energy Update: Chu'd Out in Congress*, ENERGY NOW!, (Nov. 15, 2011), available at <http://www.energynow.com/energypanel/2011/11/15/nov-14-energy-update-chud-out-congress>; Conn Carroll, *Labor board broke federal law on Boeing suit*, WASHINGTON EXAMINER, (Nov. 27, 2011), available at <http://campaign2012.washingtonexaminer.com/article/labor-board-broke-federal-law-boeing-suit>; Matthew Vadum, *Obama uses taxpayer cash to back ACORN Name changes used to dodge the law*, WASHINGTON TIMES, (Nov. 28, 2011), available at <http://www.washingtontimes.com/news/2011/nov/28/obama-uses-taxpayer-cash-to-back-acorn-name-change/>; Matthew Boyle, *Obama administration, GAO appear to have ignored group's ACORN affiliation to award \$700K*, THE DAILY CALLER, (Nov. 28, 2011), available at <http://dailycaller.com/2011/11/28/obama->

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Cause of Action's activities clearly fall within the statutory definition of this term. 5 U.S.C. § 552(a)(4)(A)(ii)(III) defines "representative[s] of the news media" broadly to include organizations that disseminate news through electronic communications, including "*publishers of periodicals . . . who make their products available for purchase by or subscription by or free distribution to the general public.*"¹⁵ Moreover, the FOIA statute itself, as amended in 2007, explicitly defines "representative of the news media"—a term that had previously been undefined in the statute—to specifically include organizations, such as Cause of Action, that regularly publish and disseminate online periodicals, *e.g.*, newsletters.¹⁶ The statutory definition unequivocally commands that organizations that electronically disseminate information and publications via "alternative media *shall* be considered to be news-media entities."¹⁷ As the plain language of the statute makes abundantly clear, then, an organization that regularly disseminates news via an online newsletter or periodical, such as Cause of Action, is a "representative of the news media" under the FOIA.

In *Electronic Privacy Information Center v. Dep't of Defense*, the court broadly construed a Department of Defense regulation defining "representative of the news media" to

administration-gao-appear-to-have-ignored-groups-acorn-affiliation-to-award-700k/; WORLDNETDAILY, *See which radicals got more taxpayer dollars: Support maintained despite organization's accounting 'problems,'* (Nov. 29, 2011), available at <http://www.wnd.com/index.php?fa=PAGE.view&pageId=372685>; Perry Chiaramonte, *ACORN Misused Federal Grant Funds, Report Says*, FOX NEWS, (Nov. 30, 2011), available at <http://www.foxnews.com/politics/2011/11/30/acorn-misused-federal-grant-funds-report-says/>; Marsha Shuler, *Group challenges La. contribution limit*, THE ADVOCATE, (Nov. 30, 2011), available at <http://theadvocate.com/news/1437637-123/group-challenges-la.-contribution-limit>; Margaret Menge, *Justice Audit Alleges ACORN Spin-Off in New York Misused Money*, NEWSMAX, (Dec. 1, 2011), available at <http://www.newsmax.com/US/ACORN-justice-audit-funds/2011/12/01/id/419672>; PITTSBURGH TRIBUNE-REVIEW, *Acorn lives: Meet AHCOA*, (Dec. 5, 2011), available at http://www.pittsburghlive.com/x/pittsburghtrib/opinion/s_770135.html; Tom Fitton, *Obama Administration Violating ACORN Funding Ban According to New Audit*, BIG GOVERNMENT, (Dec. 5, 2011), available at <http://biggovernment.com/tfitton/2011/12/05/obama-administration-violating-acorn-funding-ban-according-to-new-audit/>; NATIONAL RIGHT TO WORK COMMITTEE, *NLRB: Law Breakers?*, (Dec. 10, 2011), available at <http://www.nrtwc.org/nlrb-law-breakers/>.

¹⁵ 5 U.S.C. § 552(a)(4)(A)(ii)(III) (emphasis added).

¹⁶ The FOIA statute, as amended in 2007, defines "representative of the news media" as follows:

[T]he term "a representative of the news media" means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term "news" means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), *such alternative media shall be considered to be news-media entities.*

5 U.S.C. § 552(a)(ii)(III) (emphasis added).

¹⁷ *Id.* (emphasis added). See generally *Nat'l Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 661-662 (2007) (noting the well-established proposition that, as used in statutes, the word "shall" is generally imperative or mandatory).

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include a 501(c)(3) that, like Cause of Action, maintains a frequently visited website and regularly publishes an e-mail newsletter. Under well-established precedent, then, a 501(c)(3) requester that regularly publishes online newsletters, such as Cause of Action, is entitled to a fee waiver as a "representative of the news media," where the agency's own regulations explicitly provide that "publishers of periodicals" qualify as representatives of the news media.

The information requested regarding the IRS and the Executive Branch, specifically which taxpayers' information the President has attempted to access and the IRS's handling of such requests will be of current interest to a large segment of the general public. Cause of Action will ultimately disseminate this information that it is statutorily entitled to, *inter alia*, through its regularly published online newsletter. Additionally, Cause of Action will take the information that is disclosed, using its editorial skills and judgment, to publish news articles that will be published on our website, distributed to other media sources, and distributed to interested persons through our newsletters.

As outlined above, the plain language of 5 U.S.C. § 552(a)(4)(A)(ii)(III), controlling precedent, and the agency's regulations clearly require the conclusion that Cause of Action is a representative of the news media.

Production of Information and Contact Information

We call your attention to President Obama's January 21, 2009, Memorandum concerning the FOIA, which states in relevant part:

All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA. . . . The presumption of disclosure should be applied to all decisions involving FOIA.¹⁸

On the same day, President Obama spoke on the FOIA to incoming members of the Cabinet and staff of the White House and stated in relevant part:

The old rules said that if there was a defensible argument for not disclosing something to the American people, then it should not be disclosed. That era is now over. Starting today, every agency and department should know that this administration stands on the side not of those who seek to withhold information but those who seek to make it known. To be sure, issues like personal privacy and national security must be treated with the care they demand. But the mere fact that you have the legal power to keep something secret does not mean you should always use it. The Freedom of Information Act is perhaps the most powerful instrument we have for making our government honest and transparent, and of

¹⁸ PRESIDENT BARACK OBAMA, *Memorandum for the Heads of Executive Departments and Agencies, Subject: Freedom of Information Act*, Jan. 21, 2009, available at <http://www.whitehouse.gov/the-press-office/freedom-information-act>.

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holding it accountable. And I expect members of my administration not simply to live up to the letter but also the spirit of this law.¹⁹

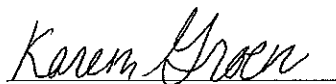
If it is your position that any portion of the requested information is exempt from disclosure, Cause of Action requests that you provide a detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.

In the event that some portions of the requested information are properly exempt from disclosure, please redact such portions and produce all remaining reasonable segregable non-exempt portions of the requested record.²⁰ If you contend that information contains non-exempt segments, but those non-exempt segments are so dispersed throughout as to make segregation impossible, please state what portion of the document is non-exempt and how the material is dispersed through the document. If a request is denied in full, please outline that it is not possible to segregate portions of the record for release.

In an effort to facilitate record production within the statutory limit, Cause of Action prefers to accept information and/or documents in electronic format (*e.g.*, e-mail, .pdf). When necessary, Cause of Action will accept the "rolling production" of information and/or documents, but requests that you provide prompt notification of any intent to produce information on a rolling basis.

If you do not understand this request or any portion thereof, or if you feel you require clarification of this request or any portion thereof, please contact me ([REDACTED]) or Marie Connelly ([REDACTED]) immediately at ([REDACTED]) ([REDACTED]). Please note that, for the purposes of responding to this request, the attached "Responding to Information Request" and "Definitions" should be interpreted consistently. We look forward to receiving the requested information and a waiver of both search and duplication fees within twenty (20) business days. Thank you for your time and assistance in this matter.

Sincerely,



KAREN GROEN
CHIEF OVERSIGHT COUNSEL

Encl. "Responding to Information Request" and "Definitions"

¹⁹ PRESIDENT BARACK OBAMA, *Remarks by the President in Welcoming Senior Staff and Cabinet Secretaries to the White House*, Jan. 21, 2009, available at <http://oversight.house.gov/hearing/foia-in-the-21st-century-using-technology-to-improve-transparency-in-government/>.

²⁰ See 5 U.S.C. § 552(b).

Responding to Information Requests

1. In complying with this request, you should produce all responsive information and/or documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to Cause of Action.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. Cause of Action's preference is to receive documents in electronic form (*i.e.*, CD, memory stick, or thumb drive) in lieu of paper productions.
4. When you produce information and/or documents, you should identify the paragraph in Cause of Action's request to which the documents respond.
5. It shall not be a basis for refusal to produce information and/or documents that any other person or entity also possesses non-identical or identical copies of the same documents.
6. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Cause of Action's staff to determine the appropriate format in which to produce the information.
7. If compliance with the request cannot be made in full, compliance shall be made to the extent possible and shall include an explanation of why full compliance is not possible.
8. In the event that information and/or documentation is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
9. If any information and/or documentation responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject, and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
10. If a date or other descriptive detail set forth in this request referring to information and/or document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all information

and/or documents which would be responsive as if the date or other descriptive detail were correct.

11. The time period covered by this request is January 1, 2007 to the present.
12. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
13. All documents shall be Bates-stamped sequentially and produced sequentially.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmation, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, e-mail, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, agents, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify” when used in a question about an applicant, means to provide the following information: (a) the parties complete name and title; and (b) the parties business address and phone number.
6. The term “referring or relating” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

Ms. Ava Littlejohn
October 9, 2012

- 1) All documents, including but not limited to emails, letters, and telephone logs or other telephone records, constituting communications to and/or from any employee of the IRS concerning any FOIA request or lawsuit that relates to I.R.C. § 6103(g);
- 2) All documents, including notes and emails, referring or relating to any communication described in request #1;
- 3) Any communications by or from anyone in the Executive Office of the President constituting requests for taxpayer or “return information” within the meaning of § 6103(a) that were not made pursuant to § 6103(g);
- 4) All documents, including notes and emails, referring or relating to any communication described in request #3;
- 5) All requests for disclosure by any agency pursuant to IRC §§ 6103(i)(1),² (i)(2),³ and (i)(3)(A);⁴
- 6) All documents, including communications not limited to notes, emails, letters, memoranda and telephone logs or other telephone records, referring or relating to records described in request #5;
- 7) All documents, including but not limited to emails, letters, telephone logs, and reports pertaining to any investigation by the Treasury Inspector General for Tax Administration into the unauthorized disclosure of § 6103 “return information” to anyone in the Executive Office of the President; and
- 8) From the time period of March 27, 2012, to the present, all documents, including e-mail communications, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under §6103(g)(1).

Cause of Action Is Entitled to a Complete Waiver of Fees (Public-Interest Purpose).

Cause of Action requests a waiver of both search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). This statute provides that the requested information and/or documents shall be furnished without or at reduced charge if “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or

² IRC § 6103(i)(1)(Disclosure of returns or return information to Federal officers or employees upon the grant of an ex parte order by a Federal district court judge or magistrate for use in Federal non-tax criminal investigations).

³ IRC § 6103(i)(2)(Disclosure of return information other than taxpayer return information to Federal officers or employees for use in Federal non-tax criminal investigations, upon request by the head of the agency or Inspector General thereof (or designated officials of the Department of Justice)).

⁴ IRC § 6103(i)(3)(A)(i) (Disclosure of return information other than taxpayer return information to apprise appropriate Federal officials of potential violations of Federal criminal law).

EXHIBIT

2



INSPECTOR GENERAL
FOR TAX
ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

November 30, 2012

Karen Groen
Cause of Action
2100 M Street, NW
Suite 170-247
Washington, DC 20037-1233

Dear Ms. Groen:

On October 30, 2012, the Internal Revenue Service (IRS) referred a portion of your October 9, 2012, Freedom of Information Act (FOIA) request, addressed to Ms. Ava Littlejohn, Public Liaison, to the Treasury Inspector General for Tax Administration (TIGTA) for handling as the records requested fall under the jurisdiction of TIGTA. The TIGTA Disclosure Branch received the referral on October 31, 2012.

Specifically, we are responding to item #7 of your request for records, from the time period of January 1, 2009 to the present, which states:

- 7) All documents, including but not limited to emails, letters, telephone logs, and reports pertaining to any investigation by the Treasury Inspector General for Tax Administration into the unauthorized disclosure of § 6103 "return information" to anyone in the Executive Office of the President.

With regard to your request for documents pertaining to a third party, TIGTA can neither admit nor deny the existence of responsive records. Your request seeks access to the types of documents for which there is no public interest that outweighs the privacy interests established and protected by the FOIA (5 U.S.C. §§ 552(b)(7)(C) and (b)(6)). This response should not be taken as an indication that such records exist; rather it is our standard response to requesters seeking records on third parties.

We have enclosed an Information Sheet that explains your administrative appeal rights. You may appeal this decision within thirty-five (35) days from the date of this letter. Your appeal must be in writing and signed by you. You should address the envelope as follows:

Freedom of Information Act Appeal
Treasury Inspector General for Tax Administration
Office of Chief Counsel
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

No fees would be assessed for processing this request.

If you have any questions, please contact Diane K. Bowers at (202) 927-7043 or diane.bowers@tigta.treas.gov and reference case # 2013-FOI-00017.

Sincerely,

A handwritten signature in cursive script that reads "Diane K. Bowers".

Diane K. Bowers
(For) Amy P. Jones
Disclosure Officer

Enclosure

Information on a TIGTA Determination to Withhold Records Exempt From the Freedom of Information Act – 5 U.S.C. § 552

Appeal Rights

You may file an appeal with the Treasury Inspector General for Tax Administration (TIGTA) within 35 days after we (1) determine to withhold records, (2) determine that no records exist, or (3) deny a fee waiver or a favorable fee category. If some records are released at a later date, you may file within 35 days after the date the last records were released. The appeal must be in writing, must be signed by you, and must contain the following information: your name and address; description of the requested records; date of the initial request (and a copy, if possible); date of the letter denying the request (and a copy, if possible). You should mail your appeal to:

Freedom of Information Act Appeal
Treasury Inspector General for Tax Administration
Office of Chief Counsel
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

Judicial Review

If we deny your appeal, or if we do not send you a reply within 20 days (not counting Saturdays, Sundays, or legal public holidays) after the date we receive the appeal, you may file a complaint with the U.S. District Court in the district where (1) you reside, (2) your principal place of business is located, or (3) the records are located. You may also file in the District Court for the District of Columbia.

The court will treat your complaint according to the Federal Rules of Civil Procedure (F.R.C.P.). Service of process is governed by Rule 4(d)(4) and (5), which requires that a copy of the summons and complaint be (1) personally served on the United State Attorney for the district in which the lawsuit is brought; (2) sent by registered or certified mail to the Attorney General of the United States at Washington, C.C.; and (3) sent by registered or certified mail to:

Treasury Inspector General for Tax Administration
Office of Chief Counsel
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

In such a court case, the burden is on the Treasury Inspector General for Tax Administration to justify withholding the requested records, determining that no records exist, or denying a fee waiver or a favorable fee category. The court may assess against the United States reasonable attorney fees and other litigation costs incurred by the person who takes the case to court and who substantially prevails. You will have substantially prevailed if the court determines, among other factors, that you had to file the lawsuit to obtain the records you requested and that the Treasury Inspector General for Tax Administration had no reasonable grounds to withhold the records. See Internal Revenue Service Regulations 26 CFR 601.702 for further details.

Exemptions

The Freedom of Information Act, 5 U.S.C. § 552, does not apply to matters that are:

- (b)(1) (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and
- (B) are, in fact, properly classified under such an Executive Order;

-2-

- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempt from disclosure by statute (other than section 552b of this title), provided that the statute
 - (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or
 - (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

Note: subsection (b)(3) protects information exempted by certain qualifying statutes, such as Internal Revenue Code § 6103, which protects tax returns and information generated by and collected by the IRS with regard to a taxpayer.
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files that disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information
 - (A) could reasonably be expected to interfere with enforcement proceedings,
 - (B) would deprive a person of a right to a fair trial or an impartial adjudication,
 - (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy,
 - (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source.
 - (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonable be expected to risk circumvention of the law, or
 - (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

EXHIBIT

3



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

December 11, 2012

Brandon Sherman
Cause of Action
1919 Pennsylvania Ave., NW
Suite 650
Washington, DC 20006

Dear Brandon Sherman:

This is an interim response letter to your Freedom of Information Act (FOIA) request dated October 9, 2012, that we received on October 10, 2012.

This interim response letter is addressing Items 3, 4, 5, 6, 7, and 8 of your request. Our office is continuing to process Items 1 and 2 of your request.

Your request indicates you are aware that Section 6103 of the Internal Revenue Code (IRC) requires that tax returns and return information be confidential. With this understanding, in the context of your FOIA request, you have indicated you are not seeking taxpayer specific information to which you are not entitled under Internal Revenue Code (IRC) section 6103.

In response to Items 3 and 4, you asked for all communications, documents, notes, and emails by or from anyone in the Executive Office of the President constituting requests for taxpayer or "return information" within the meaning of IRC section 6103(a) that were not made pursuant to IRC section 6103(g).

For the time frame specified in your request, all requests made to the IRS from White House personnel were for "tax checks". These are requests made when an individual is a prospective Presidential appointee, under consideration for employment within the Executive Branch. For such prospective employees, "tax checks" are conducted by the IRS at the request of the White House. All such disclosures to the White House of taxpayer specific information with respect to such "tax checks" are made pursuant to the written consent of the prospective employee who signs a waiver authorizing the disclosures of his/her return and return information under IRC section 6103(c). Information with respect to any of the requests is taxpayer specific and subject to the confidentiality provisions of IRC section 6103 and is therefore being withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

In response to Items 5 and 6 you asked for all requests, documents, emails, letters, etc., for disclosure by any agency pursuant to IRC sections 6103(i)(1), (i)(2), and (i)(3)(A).

IRC section 6103(i) concerns disclosures made in the context of Federal non-tax criminal investigations and prosecutions. Pursuant to IRC section 6103(i)(1), such disclosures are made pursuant to an ex parte order issued to the IRS by a Federal district court judge or magistrate at the request of enumerated personnel from the Department of Justice. Under IRC section 6103(i)(2), disclosures are made pursuant to an appropriate request from enumerated Executive Branch personnel, including heads of Federal agencies; and under IRC section 6103(i)(3), the IRS may make such disclosures at our own initiative when necessary to enforce a federal non-tax criminal law, when there is danger of imminent death or physical injury or for purposes of thwarting terrorist activities. Disclosures in all three categories are taxpayer specific such that all information pertaining to disclosures under IRC sections 6103(i)(1), (i)(2) or (i)(3) is protected by the confidentiality provisions of IRC section 6103 and is therefore being withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

In response to Item 7, you asked for all documents pertaining to any investigation by the Treasury Inspector General for Tax Administration (TIGTA) into the unauthorized disclosure of IRC section 6103 return information to anyone in the Executive Office of the President.

We have transferred this portion of your request to TIGTA. That office has jurisdiction over the records you requested and will respond to your request. If you need more information, you may write to:

Treasury Inspector General for Tax Administration
Office of Chief Counsel – Disclosure Branch
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

In response to Item 8, you asked from the time period of March 27, 2012, to the present, all documents, including e-mail communications, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under IRC section 6103(g)(1). We found no documents specifically responsive to this portion of your request.

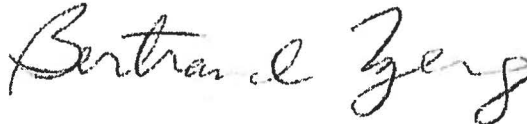
We are granting your request to waive fees associated with this response.

3

With the final response letter, we will enclose Notice 393 explaining your appeal rights.

If you have any questions please call Tax Law Specialist, Denise Higley, ID# 0142331, at 801-620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13286-0081.

Sincerely,

A handwritten signature in black ink, reading "Bertrand Tzeng". The signature is fluid and cursive, with the first name "Bertrand" and last name "Tzeng" clearly distinguishable.

Bertrand Tzeng
Acting Disclosure Manager
HQ Disclosure Program Operations and FOIA

EXHIBIT

4



PRIVACY, GOVERNMENTAL
LIAISON AND DISCLOSURE

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

March 4, 2013

Karen Groen
Cause of Action
2100 M Street, NW
Suite 170-247
Washington, DC 20037-1233

Dear Ms. Groen:

This is the final response letter to your Freedom of Information Act (FOIA) request dated October 9, 2012, that we received on October 10, 2012.

Request Items 1 and 2

We have located records associated with the litigation filed by your organization concerning such requests and have deemed these records to be responsive to items 1 and 2 of your request.

Of the 796 pages located in response to this portion of your request, we are enclosing 790 pages on the enclosed CD. We are withholding 289 pages in part and 6 pages in full under FOIA exemptions (b)(5) and (b)(6). We are also withholding pages in part that our outside the scope of your request.

FOIA exemption (b)(5) exempts from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency. There are three primary privileges covered by this exemption:

- The deliberative process privilege protects documents that reflect the pre-decisional opinions and deliberations that play a direct part in the process of making recommendations on legal or policy matters.
- The attorney work product privilege protects documents prepared by an attorney or other Service employee during litigation or in reasonable contemplation of litigation, and
- The attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice.

FOIA exemption (b)(6) exempts from disclosure files that, if released, would clearly be an unwarranted invasion of personal privacy. These include medical, personnel, and similar files. We base the determination to withhold on a balancing of interests between the protection of an individual's right to privacy and the public's right to access government information.

The Supreme Court ruled that Congress intended the "similar files" provision to be construed broadly, so that all information which applies to a particular individual qualifies for consideration under exemption (b)(6).

The redacted portions of each page are marked by the applicable FOIA exemptions.

Your password for accessing the CD is F#13286-0081f. To access the information on the CD, please follow the steps below:

1. Select GuardianEdge Removal Storage Access on your CD.
2. Select the file in the top left.
3. Select "open" file.
4. Select F#13286-0081.
5. Enter password F#13286-0081f.

Request Items 3-7

On December 4, 2012, our office sent an interim response letter addressing Items 3, 4, 5, 6, and 7 of your request. The following is a recap of the information provided in that letter.

Your request indicates you are aware that Section 6103 of the Internal Revenue Code (IRC) requires that tax returns and return information be confidential. With this understanding, in the context of your FOIA request, you have indicated you are not seeking taxpayer specific information to which you are not entitled under Internal Revenue Code (IRC) section 6103.

In response to Items 3 and 4, you asked for all communications, documents, notes, and emails by or from anyone in the Executive Office of the President constituting requests for taxpayer or "return information" within the meaning of IRC section 6103(a) that were not made pursuant to IRC section 6103(g).

For the time frame specified in your request, all requests made to the IRS from White House personnel were for "tax checks". These are requests made when an individual is a prospective Presidential appointee, under consideration for employment within the Executive Branch. For such prospective employees, "tax checks" are conducted by the IRS at the request of the White House. All such disclosures to the White House of taxpayer specific information with respect to such "tax checks" are made pursuant to the

written consent of the prospective employee who signs a waiver authorizing the disclosures of his/her return and return information under IRC section 6103(c). Information with respect to any of the requests is taxpayer specific and subject to the confidentiality provisions of IRC section 6103 and is therefore being withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

In response to Items 5 and 6 you asked for all requests, documents, emails, letters, etc., for disclosure by any agency pursuant to IRC sections 6103(i)(1), (i)(2), and (i)(3)(A).

IRC section 6103(i) concerns disclosures made in the context of Federal non-tax criminal investigations and prosecutions. Pursuant to IRC section 6103(i)(1), such disclosures are made pursuant to an ex parte order issued to the IRS by a Federal district court judge or magistrate at the request of enumerated personnel from the Department of Justice. Under IRC section 6103(i)(2), disclosures are made pursuant to an appropriate request from enumerated Executive Branch personnel, including heads of Federal agencies; and under IRC section 6103(i)(3), the IRS may make such disclosures at our own initiative when necessary to enforce a federal non-tax criminal law, when there is danger of imminent death or physical injury or for purposes of thwarting terrorist activities. Disclosures in all three categories are taxpayer specific such that all information pertaining to disclosures under IRC sections 6103(i)(1), (i)(2) or (i)(3) is protected by the confidentiality provisions of IRC section 6103 and is therefore being withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

In response to Item 7, you asked for all documents pertaining to any investigation by the Treasury Inspector General for Tax Administration (TIGTA) into the unauthorized disclosure of IRC section 6103 return information to anyone in the Executive Office of the President. We have transferred this portion of your request to TIGTA. That office has jurisdiction over the records you requested and will respond to your request. If you need more information, you may write to:

Treasury Inspector General for Tax Administration
Office of Chief Counsel – Disclosure Branch
City Center Building
1401 H Street, NW, Suite 469
Washington, DC 20005

Request Item 8

In response to item 8 of your request, the IRS has no record of requests from the White House or President of the United States pursuant to IRS 6103(g)(1).

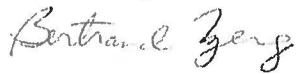
Other Matters

We have granted your request to waive fees associated with this response.

This constitutes a partial denial of your request. We have enclosed Notice 393 explaining your appeal rights.

If you have any questions please call Tax Law Specialist, Denise Higley, ID# 0142331, at 801-620-7638 or write to: Internal Revenue Service, HQ Disclosure, 2980 Brandywine Road, Stop 211, Chamblee, GA 30341. Please refer to case number F13286-0081.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bertrand Tzeng".

Bertrand Tzeng
Disclosure Manager
HQ Disclosure Program Operations and FOIA

Enclosures:
CD
Notice 393

Information on an IRS Determination to Withhold Records Exempt From The Freedom of Information Act – 5 U.S.C. 552

Appeal Rights

You may file an appeal with the Internal Revenue Service (IRS) within 35 days after we (1) deny you access to a record in whole or in part; (2) have made an adverse determination as to your category as a requester; (3) deny your request for a fee waiver or reduction; or (4) have advised you that no records responsive to your request exist. You may file an appeal within 10 days when a request for expedited processing has been denied.

Your appeal **must** be in writing, must be signed by you, and must contain:

Your name and address,
Description of the requested records,
Date of the request (and a copy, if possible),
Identity of the office and contact on the response letter, and
Date of the letter denying the request (and a copy, if possible)

Mail your appeal to: **IRS Appeals**
Attention: FOIA Appeals
M/Stop 55202
5045 E. Butler Ave.
Fresno, California 93727-5136

Judicial Review

If we deny your appeal, or do not address an issue raised in your appeal within 20 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal, you may file a complaint in United States District Court in the district in which (1) you reside; (2) your principal place of business is located; (3) the records are located; or (4) the District of Columbia. A complaint may be filed within 10 days (excluding Saturdays, Sundays, or legal public holidays) after the date we receive your appeal if your appeal is from an adverse determination of a request for expedited processing. If you choose to file suit before receipt of a final determination by the Appeals office, the administrative appeals process may cease.

The rule for effecting service of judicial process upon the Internal Revenue Service is set forth in Federal Rule of Civil Procedure 4(i). In addition to service upon the United States, as set forth in Rule 4(i)(1), service must be made upon the Internal Revenue Service by registered or certified mail as set forth in Rule 4(i)(2)(A).

The address of the Internal Revenue Service is: Internal Revenue Service, Attention CC:PA, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

Exemptions

The Freedom of Information Act, 5 U.S.C. 552, does not apply to matters that are:

- (b)(1) • specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified under such executive order,
- (b)(2) • related solely to the internal personnel rules and practices of an agency,
- (b)(3) • specifically exempted from disclosure by statute (other than section 552b of this title), provided that the statute:

(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or

(B) establishes particular criteria for withholding or refers to particular types of matters to be withheld.

Note: Internal Revenue Code sections 6103 and 6105 are statutes which qualify for exemption 3 treatment. Section 6103 protects the confidentiality of tax returns and information pertaining to a taxpayer collected by the IRS. Section 6105 protects information obtained from a foreign country under a tax treaty.

EXHIBIT

5

Internal Revenue Service
Appeals Office M/S 55203
5045 E Butler Ave
Fresno, CA 93727-5136

Date: **MAY 06 2013**

KAREN GROEN OLEA
(CAUSE OF ACTION)
1919 PENNSYLVANIA AVE NW STE 650
WASHINGTON, DC 20006

Department of the Treasury

Person to Contact:

Diane Ambriz
Employee ID Number: 1000157666
Tel: (559) 253-4840
Fax: (559)-253-4880

Refer Reply to:

AP:CO:FRC:DMA

In Re:

Freedom of Information Act

Disclosure Case Number(s):

F13286-0081

Tax Period(s) Ended:

1/1/2009 to 10/9/2012

Dear Karen Groen Olea:

This letter is in response to your appeals request dated April 8, 2013 for Freedom of Information Act (FOIA) information. According to your letter you are appealing the response of March 4, 2013 from the Disclosure Office of your original request for information dated October 9, 2012.

You requested 8 items from the time period of January 1, 2009 to October 9, 2012. You requested:

- 1) All documents, including e-mails, letters, and telephone logs or other telephone records, constituting communications to and from any employee of the IRS concerning any FOIA request or lawsuit that relates to IRC section 6103(g).
- 2) All documents, including notes and emails, referring or relating to any communications described in request #1.
- 3) Any communications by or from anyone in the Executive Office of the President constituting requests for taxpayer or return information within the meaning of IRC section 6103(a) that is made in pursuant to IRC §610.
- 4) All documents, including notes and emails, referring or relating to any communications described in request #3.
- 5) All requests for disclosure by any agency pursuant to IRC sections 6103(i)(1),(i)(2), and (i)(3)(4).
- 6) All documents, including communications not limited to notes and emails, letters, memoranda and telephone logs or other telephone records, referring or relating to any communications described in request #5.
- 7) All documents, including but not limited to notes and emails, letters, telephone logs, and reports pertaining to any investigation by TIGTA into the unauthorized disclosure of §6103 return information to anyone in the Executive Office of the President and
- 8) From the time period of March 27, 2012, to the present, all documents, including email communications, constituting or relating to a request by the President or any one designated by the President in his Executive Office for tax records under §6103(g)(1).

The Disclosure Office located 796 pages in response to a portion of your request and enclosed 790 pages in a CD. Disclosure withheld 289 pages in part and 6 pages in full under FOIA exemptions (b)(5) and (b)(6). Disclosure also withheld pages in part that were outside the scope of your request.

The Disclosure Office explained FOIA exemptions (b)(5) and (b)(6). Disclosure properly explained IRC §6103(g).

FOIA exemption (b)(5) exempts from disclosure inter-agency or intra-agency memorandum or letters which would not be available by law to a party other than an agency in litigation with the agency. The three primary privileges covered by this exemption were explained as follows:

1. The deliberative process privilege protects documents that reflect the pre-decisional opinions and deliberations that play a direct part in the process of making recommendations on legal or policy matters. 2. The attorney work product privilege protects documents prepared by an attorney or other Service employee during litigation or in reasonable contemplation of litigation and 3. The attorney-client privilege protects confidential communications between an attorney and a client relating to a legal matter for which the client has sought professional advice.

FOIA exemption (b)(6) exempts from disclosure files that if released would clearly be an unwarranted invasion of personal privacy, which is based on the determination to withhold on a balancing of interests between the protection of an individual's right to privacy and the public's right to access government information.

The Supreme Court ruled that Congress intended the "similar files" provision to be construed broadly, so that all information which applies to a particular individual qualifies for consideration under exemption (b)(6).

Disclosure responded to your request in items 3 and 4, requesting any communications by or from anyone, in the Executive Office of the President constituting requests for taxpayer or return information within the meaning of IRC §6103(a) that is made in pursuant to IRC §6103 and all documents including notes emails, letters, referring or relating to any communications by or from anyone in the Executive Office of the President.

Disclosure explained for the time frame you requested, all requests made to the IRS from White House Personnel were for tax checks. The requests were made when an individual is a prospective Presidential appointee, under consideration for employment within the Executive Branch. All tax checks are conducted by the IRS at the request of the White House and all such disclosures to the White House of taxpayer specific information with respect to such tax checks are made pursuant to the written consent of the prospective employee who signs a waiver authorizing the disclosure of their return information under IRC section 6103(c). Information with respect to any of the request is taxpayer specific and subject to the confidentiality provisions of IRC §6103 and was withheld under FOIA exemption (b)(3) in conjunction with IRC § 6103(a).

Disclosure responded to items 5 and 6 of your requests regarding all request, documents, emails, letter, etc. for disclosure by any agency pursuant to IRC sections 6103(i)(1), (i)(2) and (i)(3)(a).

Disclosure explained IRC section 6103(i) concerning disclosures made in the context of Federal non-tax criminal investigations and prosecutions. Disclosure explained IRC 6103 (i)(1) that such disclosures are made pursuant to an ex parte order issued to the IRS by a Federal district court judge or magistrate at the request of enumerated personnel from the Department of Justice.

Disclosure stated under IRC 6103 (i)(2), that disclosures are made pursuant to an appropriate request from enumerated Executive Branch personnel and under IRC section 6103(i)(3), the IRS may make disclosures at their own initiative when necessary to enforce a federal non-tax criminal law, when there is danger or imminent death or physical injury or for purposes of thwarting terrorist activities.

All three categories are taxpayer specific such that all information pertaining to disclosures under IRC 6103(i)(1), (i)(2) and (i)(3)(a) are protected by the confidentiality provisions of IRC section 6103 and was therefore withheld under FOIA exemption (b)(3) asserted in conjunction with IRC section 6103(a).

Disclosure responded to your request in item 7 requesting all documents pertaining to any investigation by TIGTA into the unauthorized disclosure of IRC section 6103 return information to anyone in the Executive Office of the President. Disclosure stated they transferred this request to TIGTA because they have jurisdiction over those records.

Disclosure responded to your request in item 8 requesting all documents, emails, constituting or relating to a request by the President or anyone designated by the President in his Executive Office for tax records under 6103(g)(1). Disclosure stated the IRS has no record of requests from the White House or President of the U.S. pursuant to IRS 6103(g)(1).

Your appeal dated April 8, 2013 states that IRS improperly withheld six documents in full that were responsive to requested items 1 and 2, claiming FOIA exemptions (b)(5) and (b)(6). You stated the 289 redacted documents were also done improperly. You stated IRS's response did not specify how many of the six withheld-in-full documents were withheld under Exemptions 5 and 6. You stated the IRS improperly relied on FOIA exemptions 5 and 6 as a basis for its withholding and redactions, and its refusal to produce the requested records in full violates FOIA.

You state IRS failed to meet applied Exemption 5 because it did not provide sufficient specificity to permit CoA to understand its rationale for withholding the responsive information.

Your appeal states that IRS improperly applied Exemption 6 and you seek information related to unauthorized and statutorily authorized requests by the President and executive agencies for taxpayer information. You stated in asserting this exemption, the IRS has improperly weighed the interests between disclosure and individuals person privacy.

You stated IRS failed to undertake an adequate search reasonably calculated to uncover all relevant documents or failed to disclose that it withheld responsive documents both of which are impermissible under the law to the requested information related to IRC section 6103(g).

You stated the IRS improperly limited the scope of its search to your item 3 request requesting all communications by or from the Executive Office of the President. You state the IRS did not indicate that it searched for unauthorized request by the White House for taxpayer or return information.

You stated the IRS improperly claimed Exemption (b)(3) because IRS improperly relied on the exemption to withhold records responsive to requested items 3 and 6, claiming that all responsive documents are taxpayer specific and therefore subject to the confidentiality provisions of IRC section 6103. You stated what exemption (b)(3) allows and stated not all tax-related information is protected from disclosure under section 6103(a) and the specific information sought by FOIA must fall within the scope of the statutory exemption.

You stated IRS has claimed that IRC section 6103(a) exempts 1) all documents relating to White House requests for taxpayer or return information and 2) all documents relating to Executive Branch requests for taxpayer or return information pursuant to IRC section 6103(i)(1), (i)(2) and (i)(3). You state a communication requesting return information does not itself constitute return information and the purpose of section 6103(a) is to protect tax information. Yet a request by the White House or the Executive Branch does not include the nature or source of any tax related information, it is not for processing of the return or for tax investigation and it is not data with respect to a return or liability. An authorized tax check by the White House is made for the sole purpose of considering the employment of a prospective Presidential appointee and any request by the Executive Branch under section 6103(i) is made in the context of non-tax criminal investigations and prosecutions. You stated Cause of Action had no interest in any underlying return information the IRS provided to the President or the Executive Branch and since it is the IRS, not the President that is charged with the administration and enforcement of the tax laws, any requests that the White House or Executive Branch made could not possibly related to the determination of the existence, or possible existence, of liability of any person under this title or to whether the taxpayer return was, is being or will be examined. You state IRS improperly categorically denied these portions of your FOIA requests under FOIA exemption (b)(3) since CoA does not seek return information protected by the confidentiality provisions of IRC section 6103 and that IRS must provide the withheld documents as they are clearly responsive to requested items 3 and 6.

You stated IRS failed to release reasonably segregable portions of the records responsive to requested items 1-6. You stated that FOIA requires that all non-exempt information be disclosed, and that all agencies conduct a segregability review of responsive records to determine any portions of the records may be disc losable. You state agencies cannot justify withholding an entire document simply by showing that it contains some exempted material and you state IRS failed to provide adequate justification for failing to segregate the non-exempt materials from the exempt materials.

We have reviewed the response of the Disclosure Specialist, the Disclosure database, as well as the documents withheld and have determined that the response was appropriate. The Appeals office responsibility concerning the appeal of FOIA cases is limited to a de novo review to ensure the documents withheld or redacted for the specific requester and documents requested fall within the FOIA exemption(s) cited. We address the adequacy of the search and the appropriateness of the redactions and the exemptions cited. Our sole responsibility is to determine if the documents were properly withheld under the FOIA.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and the Office of Disclosure as a non-exclusive alternative to litigation. The Office of Appeals is not a part of this mediation process. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. If you disagree with the Appeals determination and wish to pursue mediation, you may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

The FOIA requires us to advise you of the judicial remedies granted in the Act. You may file a complaint in the United States District Court for the District in which you reside, or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

Sincerely,



T. Mitchell
Appeals Team Manager

EXHIBIT

6

From: [Marie Connelly](#)
To: chiefcounseldisclosure@tigta.treas.gov
Bcc: [REDACTED]
Subject: Status of FOIA Request F13286-0081?
Date: Tuesday, May 21, 2013 5:15:54 PM
Attachments: [2013 3 4 IRS Final Response WH.pdf](#)

To Whom It May Concern:

On March 4, 2013, Bertrand Tzeng, Disclosure Manager for the HQ Disclosure Program Operations & FOIA, transferred a portion of Cause of Action's FOIA Request to your office. As you will see on page three of the attached letter, Mr. Tzeng states:

"In response to Item 7, you asked for all documents pertaining to any investigation by the Treasury Inspector General for Tax Administration (TIGTA) into the unauthorized disclosure of IRC section 6103 return information to anyone in the Executive Office of the President. We have transferred this portion of your request to TIGTA. That office has jurisdiction over the records you requested and will respond to your request."

I write to determine the status of this FOIA request, case number F13286-0081. Would you please call me at [REDACTED] to discuss its status?

Marie A. Connelly | Staff Counsel | Cause of Action
1919 Pennsylvania Ave NW, Suite 650
Washington, D.C. 20006
[REDACTED]

Admitted in the District of Columbia & New York

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Click [here](#) to subscribe to our alerts!



Confidentiality:

The information contained in, and attached to, this communication may be confidential, and is intended only for the use of the recipient named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please re-send this communication to the sender and delete the original message and any copy of it from your computer system. Thank you.

Ber

EXHIBIT

7

From: [Bowers Diane K TIGTA](#)
To: [Marie Connelly](#)
Subject: RE: Status of FOIA Request F13286-0081?
Date: Wednesday, May 22, 2013 4:08:43 PM

Hi Marie,

Yes, for appeal purposes, you may consider our response as being received today as you do not have a record of it being received previously.

Diane

From: Marie Connelly [REDACTED]
Sent: Wednesday, May 22, 2013 2:00 PM
To: Bowers Diane K TIGTA
Subject: RE: Status of FOIA Request F13286-0081?

Dear Diane,

Thank you kindly for your quick response and for talking to me on the phone regarding CoA's FOIA Request, 2013-FOI-00017.

After reading TIGTA's November 30, 2012 letter, Cause of Action would like to appeal this determination. We realize that the 35-day deadline to submit an appeal has passed, but considering that Cause of Action did not receive the appeal because of the address change, we respectfully request an opportunity to submit an appeal with the 35-day period beginning today. Our appeal would therefore be due on or by June 26, 2013.

Alternatively, we could submit the same FOIA request to TIGTA, receive the same response from TIGTA, and start the process anew. However, this is inefficient for both TIGTA and for Cause of Action.

With your confirmation, the clock for CoA's appeal of the November 30, 2012 letter begins today. Please contact me at [REDACTED] or at this email address if you have any question or would like any additional information.

Sincerely,
Marie

From: Bowers Diane K TIGTA [<mailto:Diane.Bowers@tigta.treas.gov>]
Sent: Wednesday, May 22, 2013 10:57 AM
To: Marie Connelly
Subject: RE: Status of FOIA Request F13286-0081?

Hi Marie,

Here is our response to Ms. Groen. I looked into whether we had sent an acknowledgment to Ms. Groen. I determined we did not send an acknowledgment to her as the IRS said to wait until they had officially referred it to us. In the meantime (waiting for them to do the "official" referral), we went ahead and processed it and responded to our portion of the request.

Please call me if you have any other questions. Thank you.

Diane K. Bowers
Government Information Specialist
TIGTA/Chief Counsel/Disclosure Branch
Phone 202-927-7043
Fax 202-622-3339

From: Marie Connelly [REDACTED]
Sent: Tuesday, May 21, 2013 5:16 PM
To: &TIGTA Chief Counsel Disclosure
Subject: Status of FOIA Request F13286-0081?

To Whom It May Concern:

On March 4, 2013, Bertrand Tzeng, Disclosure Manager for the HQ Disclosure Program Operations & FOIA, transferred a portion of Cause of Action's FOIA Request to your office. As you will see on page three of the attached letter, Mr. Tzeng states:

"In response to Item 7, you asked for all documents pertaining to any investigation by the Treasury Inspector General for Tax Administration (TIGTA) into the unauthorized disclosure of IRC section 6103 return information to anyone in the Executive Office of the President. We have transferred this portion of your request to TIGTA. That office has jurisdiction over the records you requested and will respond to your request."

I write to determine the status of this FOIA request, case number F13286-0081. Would you please call me at [REDACTED] to discuss its status?

Marie A. Connelly | Staff Counsel | Cause of Action
1919 Pennsylvania Ave NW, Suite 650
Washington, D.C. 20006

[REDACTED]
Admitted in the District of Columbia & New York

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Click [here](#) to subscribe to our alerts!

EXHIBIT 9

Cause of Action v. Treasury Inspector General for Tax Administration (D.D.C.)



INSPECTOR GENERAL
FOR TAX
ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

July 10, 2013

Karen Groen
Chief Oversight Counsel
Cause of Action
1919 Pennsylvania Avenue, N.W.
Suite 650
Washington, DC 20006

Re: Freedom of Information Act (FOIA) Appeal dated June 12, 2013
2013-APP-00026

Dear Ms. Groen:

This is in response to your June 12, 2013 letter, in which you sought to appeal the Treasury Inspector General for Tax Administration's (TIGTA) November 30, 2012, response to your Freedom of Information Act (FOIA) request dated October 9, 2012. TIGTA's Office of Chief Counsel received your appeal on June 12, 2012.

As it pertained to TIGTA, your request sought "[a]ll documents, including but not limited to emails, letters, telephone logs, and reports pertaining to any investigation by the Treasury Inspector General for Tax Administration into the unauthorized disclosure of § 6103 'return information' to anyone in the Executive Office of the President" The Disclosure Officer's response advised you that TIGTA could neither admit nor deny the existence of records responsive to your request seeking documents pertaining to a third party.

After careful consideration of your appeal, TIGTA affirms the response offered in the Disclosure Officer's November 30, 2012, letter. Your request seeks documents which, if they exist, would have been collected or prepared by TIGTA in connection with an investigation of third parties regarding alleged violations of § 7213 of the Internal Revenue Code, Title 26, U.S.C. We are affirming the Disclosure Unit's determination that admitting or denying the existence of responsive records in such cases would injure privacy interests protected by FOIA Exemptions (b)(6) and (b)(7)(C) without any overriding benefit to the public interest. In addition, any information collected or generated by TIGTA during the course of such 26 U.S.C. § 7213 investigations, including the fact that an investigation even took place, would constitute the return information of the person(s) being investigated. Because the disclosure of third party return information is prohibited by 26 U.S.C. § 6103 absent specific statutory authority, FOIA Exemption (b)(3) provides further support for the Disclosure Unit's *Glomar* response.

This letter constitutes the final decision of TIGTA with respect to your FOIA appeal. If you believe that this decision is in error, you may challenge it by filing a complaint in the United States District Court for the district in which you reside or have your principal place of business, or in which the agency records are located, or in the District of Columbia.

In addition, as part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001

E-mail: ogis@nara.gov
Telephone: 301-837-1996
Facsimile: 301-837-0348
Toll-free: 1-877-684-6448

If you have any questions concerning this matter, you may contact Greg Miller at (202) 622-4068.

Sincerely,

 , acting for

Gladys M. Hernández
Deputy Chief Counsel

cc: Disclosure Officer

EXHIBIT 10

Cause of Action v. Treasury Inspector General for Tax Administration (D.D.C.)



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

INSPECTOR GENERAL
FOR TAX
ADMINISTRATION

July 3, 2013

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

This letter responds to your June 3, 2013 letter requesting information on TIGTA investigations. On June 21, 2013, we held an in-person briefing with your staff, which generated a follow-up e-mail on June 25, 2013 that clarified and supplemented your original request.

You requested information on TIGTA investigations involving audits of political candidates and unauthorized accesses to tax records of political candidates or donors. In our briefing with staff, we noted that we do not track statistically by category whether cases involve political candidates or donors. However, we have conducted a search of our records to identify the cases in which the political activity of a complainant or victim was noted in the case tracking system as relevant to the matter under review. This includes cases involving candidates or donors themselves, as well as their spouses and entities associated with political donors and candidates. We have identified the following information as responsive to your request.

Question One:

Since 2006, in how many instances has TIGTA found evidence that the IRS targeted for audit any candidates for public office? In our meeting, your staff expanded this request to include allegations and investigations on this topic.

We did not identify any closed cases from 2006 to the present involving allegations that the IRS targeted for audit candidates for public office. We are currently reviewing two allegations on this topic.

Question Two:

Since 2006, in how many instances has TIGTA found evidence that the confidential tax records of any political donor or candidate for public office were inappropriately accessed by any IRS employee or other Federal or State government officials? In our

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meeting, your staff expanded this request to include allegations and investigations on this topic.

We identified eight items involving allegations of unauthorized access or disclosure of tax records of political donors or candidates.

Our reviews determined that in four of these eight cases, the allegations were not substantiated by evidence. In one case, we determined that no access occurred, and, in three cases, access occurred, but there were legitimate business reasons for the access.

In the other four of the eight cases, we found evidence that unauthorized access or disclosure occurred. In three of these cases, we determined that the unauthorized access or disclosure occurred, but was inadvertent and there was no evidence of willfulness. We referred one of these three cases to the Department of Justice for additional review, and the Department of Justice concurred with our assessment that there was no willfulness and declined prosecution. In the fourth case, we presented evidence of a willful unauthorized access to the Department of Justice, but the case was declined for prosecution.

As we have discussed, we believe this is the level of detail that we are able to provide on these cases consistent with the confidentiality restrictions of 26 U.S.C. § 6103. We can provide additional details on these cases if authorized by the Chairman of the Committee on Finance.

I hope this information is helpful. If you or your staff has any questions, please contact me at 202-622-6500 or Deputy Inspector General for Investigations Tim Camus at 202-927-7160.

Sincerely,

A handwritten signature in cursive script that reads "J. Russell George".

J. Russell George
Inspector General